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Current Topics.

Judicial Changes.

FOR some little time rumour has been busy in legal circles with regard to changes in the personnel of the Bench, and although, as we are all aware, rumour is not always to be trusted, on this occasion it has proved to be correct. First of all, LORD ROCHE, who has been one of the Lords of Appeal in Ordinary only since 1935, but has been a judge since 1917, has tendered his resignation, and the vacancy caused thereby has been filled by the promotion of Lord Justice ROMER, who possesses all the legal learning of his father and not a little of the gay humour of his maternal grandfather, MARK LEMON, the distinguished editor of *Punch*. We feel sure that the whole profession will rejoice in this well-deserved promotion, which incidentally brings up the number of equity specialists in the House to three—LORD RUSSELL OF KILLOWEN, LORD MAUGHAM, and him whom we shall know in the future as LORD ROMER. A vacancy having been created in the ranks of the Lords Justices, Mr. Justice CLAUSON, the present senior puisne in the Chancery Division, has been appointed to the Court of Appeal. As the nephew of the late LORD WRENBURY, he had a kind of hereditary interest in company law, which found expression in the assistance he gave in the editing of the familiar classic "Buckley's Companies Acts," and this knowledge, as well as his great experience gained since his appointment to the Bench in 1926, should prove of immense value in the work which will now fall to him as a Lord Justice. In the Chancery Division he is succeeded by Mr. FERGUS DUNLOP MORTON, K.C., who has come rapidly to the front as a very learned lawyer and an advocate who could present his cases to the court in terms of great lucidity as well as with convincing force. He, too, should prove a notable accession to the Bench. The new judge served in the Highland Light Infantry during the war and gained the Military Cross. It may be of interest to add that the two higher of these appointments are made on the nomination of the Prime Minister, while that to the Chancery Division is on the nomination of the Lord Chancellor, although it is understood that both those high dignitaries usually confer with each other on the subject.

Hilary Law Sittings.

A SUBSTANTIAL increase of business, compared with that of the corresponding period last year, is indicated by such of the figures as are available at the time of writing concerning matters set down for hearing for the present term which begins on Tuesday. The number of appeals to the Court of Appeal is 229—an increase of 16. Of the 215 final appeals, 38 are from the Chancery Division, 104 are from the King's Bench, and eight from the Probate, Divorce and Admiralty Division. The last three figures include respectively six appeals in bankruptcy, 11 from the Revenue Paper, and four Admiralty appeals. Final appeals also include 65 from county courts, 18 workmen's compensation cases among them, and there are 14 interlocutory appeals. There is a remarkable increase in King's Bench actions from 656 last year to 1,147. The Ordinary List comprises 103 special jury, 150 common jury, and 539 non-jury actions, the corresponding figures for 1937 being respectively 45, 44 and 329. There are 306 cases in the New Procedure List, 23 in the Commercial List, while 26 actions have been set down for hearing under Ord. XIV. The total for the Divisional Court is 100—an increase of eight over last year's figure—including 50 appeals in the Crown Paper, 10 in the Civil Paper, 20 in the Revenue Paper, 10 in the Special Paper, eight under the Housing Acts, and two motions for judgment. The lists for the Probate, Divorce and Admiralty Division show an increase of 133 to 1,680 divorce causes, of which 1,101 are undefended and 579 (including 50 common jury actions) are defended. There are seven appeals and motions in bankruptcy. Other figures which are not yet available will be given in our next issue.

Royal Marriage Act.

THE announcement which appeared in last week's issue of the *London Gazette* that at a meeting of the Privy Council, held at Sandringham, on 26th December, HIS MAJESTY was pleased to declare his consent to a contract of matrimony between HER ROYAL HIGHNESS PRINCESS FREDERICA LOUISA OF BRUNSWICK-LUNEBURG and HIS ROYAL HIGHNESS PRINCE PAUL OF GREECE, may have excited surprise in the minds of some people how it comes about that to a contract of betrothal between members of two foreign royal houses the consent

of the Sovereign of this country should be deemed essential. The explanation is to be found in the provisions of the Royal Marriage Act, 1772, a statute which GEORGE III insisted upon being passed in view of certain marriages of royal personages contracted out of royal circles. So determined was he to prevent such alliances for the future that he required his ministers to enact this statute, and to the Prime Minister, LORD NORTH, he wrote in these terms: "I expect every nerve to be strained to carry the Bill. It is not a question relating to administration, but personally to myself; therefore, I have a right to expect a hearty support from every one in my service, and I shall remember defaulters." No one except the King himself was enthusiastic for the measure, but despite some opposition it was eventually passed, its main provision being that no descendant of GEORGE II (except the issue of Princesses married into foreign families) can contract a valid marriage without the royal consent signified under the Great Seal, and declared in council. If contracted without such consent, the marriage is to be deemed void. Its ultimate object was, of course, to debar those marrying without such consent from ever inheriting the crown of this realm. As Professor BERRIEDALE KEITH has said, the Act was quite indefensible in principle, since it extends indefinitely to royal descendants and is not limited to those who are in reasonable proximity to the throne. For those curious in such matters, it may be added that in HIS MAJESTY'S Declaration of Abdication Act, 1936, the Royal Marriages Act, 1772, is not to apply to the DUKE OF WINDSOR, nor to his issue, if any, or the descendants of that issue.

Bar Council: Annual Statement, 1937.

AMONG matters of general interest contained in the recently issued annual statement for 1937 of the General Council of the Bar, is the emphasis laid upon the essential importance of a legal qualification to anyone holding the office of coroner. It is recalled that the report of the Departmental Committee on Coroners recommended that in future only barristers and solicitors should be appointed as coroners (other *desiderata* being experience as deputy coroners and a knowledge of forensic medicine), and that the London County Council decided, last July, that in future only barristers and solicitors will be eligible as coroners. This view will, we think, be readily endorsed by readers. Attention is also drawn to the fact that the council has from time to time urged upon courts of quarter sessions that questions of considerable difficulty may arise in regard to committals to those courts for Borstal sentence under s. 10 of the Criminal Justice Administration Act, 1914, as amended by s. 46 (1) of the Criminal Justice Act, 1925, and that it is desirable for the bench to have the assistance of prosecuting counsel in these cases. It is intimated, in this connection, that the Court of Criminal Appeal has now expressed the view that it is desirable that the prosecution at quarter sessions in such cases should always be conducted by counsel. Mention may also be made of certain of the questions submitted to the council during the year of interest to solicitors. One of these related to the propriety of a barrister giving a proof of evidence to solicitors of what occurred at a hearing in which he was professionally engaged. The question arose out of a contemplated action for negligence by a lay client against his solicitors by whom the barrister had been consulted. The barrister replied that he was not prepared to give a statement or proof of evidence to the solicitors, but if his evidence was desired he was prepared to attend in court, if so requested, and give oral evidence and assist the court as best he could by giving his recollection of any matters on which the court desired to be informed. The council passed a resolution to the effect that the foregoing attitude was in accordance with the traditions and practice of the Bar. With regard to furnishing a proof of his evidence, the council, according to the same resolution, is of opinion that it would not be in accordance with the traditions and practice of the Bar for him to do so. At the same time it is realised that occasions may arise in connection with contemplated litigation when it would be proper for counsel in the interests of justice to comply with a request for information as to certain incidents in the conduct of a case in which he has previously appeared, but it must be for counsel himself to decide whether the interests of justice so require.

A Returned Brief.

SOME difference of opinion between the Bar Council and The Law Society emerges from the answer to a question arising out of a complaint by a solicitor that a barrister did not treat him properly in returning a circuit brief at such short notice as, it was said, to embarrass the lay client in the matter of expense. The barrister stated that, in addition to the appearance of the case in the cause list unexpectedly and the exigencies of other legal work, compelling social engagements prevented him from attending the assize at the essential time. The council expressed itself unable to accept the view put forward by The Law Society that acceptance by counsel of a brief on circuit implied that he would be available on every day until the assize ended, but intimated that a social engagement does not, save in very exceptional circumstances, justify counsel in returning a brief at short notice. Two further replies, the first of them in answer to a question asked by a firm of solicitors, may be shortly noted. A county court judge expressed his thanks to counsel engaged in a certain case and stated that in view of the length of the case he would make a special allowance for counsel to be fixed by the Registrar. The council replied that, in the circumstances, counsel ought not to have his brief fee increased. The second of these questions was from a barrister who asked whether, in view of special circumstances (lack of funds and the solicitors acting without fee) he could properly act as counsel for a charity in an application to the court for the sanctioning a scheme without requiring a fee, and the council replied that in the circumstances stated there was no reason why he should not act without fee. The annual general meeting of the Bar, at which the Attorney-General will preside, will be held at the Inner Temple Hall on Tuesday, 18th January, at 4.15 p.m.

"Safety First."

THE expression "safety first" has in the course of time lost much of its appeal of earlier days, and in this way its history has not differed from other catchphrases and slogans. To regard the phrase as a counsel of perfection is to divorce it from its context and expose it to facile ridicule, but as a concomitant of prudence the phrase may well be borne in mind by those who wish to avoid an end which has nothing glorious about it, and can only be regarded as the outcome of stupidity in an age where mechanical contrivances too often exact swift and irreparable penalty for the incautious act. At a recent dinner held to celebrate the twenty-first anniversary of the London Safety First Council, it is pleasant to record that Sir HERBERT BLAIN, the founder, was in the chair, and that he was supported by many original members of the council. A congratulatory message was received from THE KING who expressed the hope that the efforts of the association to deal with so grave a problem would meet with increasing support. Practitioners who are familiar with the legal consequences of negligence in its myriad forms probably encounter it most frequently in these days in the shape of claims for compensation as a result of accidents in factories or on the roads. In the former connection may be noted the Home Secretary's statement that he had first-hand knowledge of what the safety first organisations were doing for the prevention of accidents, in the latter it may be recorded that the Minister of Transport wrote emphasising the great debt which the community as a whole owed the movement for its work in arousing the national consciousness to the needless waste of human life and capacity resulting from sheer carelessness and neglect of simple safety precautions. It might also be urged that frequent acts of carelessness on

the part of victims of road accidents increases the difficulty of differentiating between the negligent and the careful driver, and visiting the former with appropriate penalties; for, so long as the acts of inadvertence abound, the element of good fortune cannot be entirely eliminated in estimating the merits of a long accident-free driving record, while the fact that a driver has been involved in a number of accidents does not necessarily prove him to be unfit to be in charge of a vehicle. This may be considered to be a somewhat minor point, but if the elimination of the reckless driver is regarded as one of the most important factors in road safety (as in our view it is) anything which tends to blur the distinction between him and the cautious driver can hardly be viewed as other than matter for regret.

The Halt Sign: "Reasonable Visibility."

WHEN a person has given it as his opinion that a certain course of action is, in all circumstances, unnecessary, a question directed to him concerning the propriety of that or a less drastic course in the light of regulations intended to govern the application of either to various sets of circumstances might be considered embarrassing. The Royal Automobile Club has recorded its opinion that the "Halt" sign is unnecessary, and in the light of this fact it is not easy to decide whether the palm for open-mindedness should go to the Minister of Transport for consulting that body on the subject or to the Royal Automobile Club for formulating principles affording assistance in the matter. However that may be, the incident may well be regarded as symptomatic of a willingness to co-operate which should be of real advantage to all road users. It may be remembered that some months ago the Ministry criticised the action of certain local authorities in erecting "Halt" signs where the "Slow" sign would have provided sufficient warning of the presence of a major road ahead. It has now been laid down that the former shall be used in preference to the latter only at junctions where there is not a "reasonable degree of visibility for traffic emerging from the minor road." No guidance is given as to what shall be considered a reasonable degree of visibility, and the Royal Automobile Club was asked to give its advice and assistance to local authorities, particularly with regard to the siting of the white stop lines used in connection with the "Halt" sign. It is stated in reply that the visibility is reasonable if a driver, when sitting in a car in the minor road, in such a position that he is on the centre line of the minor road and fifteen feet from the carriageway of the major road, can see a car on the major road (on the side nearest to the minor road) when it is distant eighty yards or more in each direction. This applies when the major road is not restricted. When there is a speed limit the corresponding distance is said to be twenty yards. These distances have been calculated with reference to the space required by a driver to pull up on observing a car emerging from the minor road and have been determined as the result of experiment. We do not share the opinion of the Royal Automobile Club that the "Halt" sign is invariably unnecessary, but, as intimated in earlier paragraphs on the subject, we favour its use being stringently restricted in view of the fact that its too frequent employment can only lead to it being ignored in cases where its presence is dictated by considerations of safety.

Contributory Pensions: New Law.

IT may be shortly noted that 3rd January, as the first Monday of 1938, saw the coming into force of the Widows', Orphans' and Old Age (Pensions) (Voluntary Contributors) Act, 1937. The new statute extends on a voluntary basis the provisions of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, to men whose incomes do not exceed £400 a year and to women whose incomes do not exceed £250. Of the foregoing amounts, up to £200 and £125 may be unearned. During the first year of the operation of the Act entry into the scheme is open to men and women, married or single, who were not over fifty-five on the date when the Act came into force; thereafter it is limited to those whose age at the date of application does not exceed forty. Practitioners, who are so frequently called upon to give advice on such matters, might do well to bear this fact in mind. The various provisions of the Act cannot, of course, be gone into here in detail, but it may be noted that among the benefits are widows' pensions at 10s. a week with children's allowances, orphans' pensions of 7s. 6d. a week for each child, old age pensions of 10s. a week for insured men and women from the age of sixty-five, and similar pensions for wives of qualified men pensioners. The raising of the income of those eligible brings within the scheme a number of persons who too often fall on evil times and whose needs in time of stress may not be less urgent than those of the poorer sections of the community.

Rules and Orders: Matrimonial Causes: Assizes.

THE attention of readers is drawn to the Matrimonial Causes at Assizes Order, 1937, the text of which was set out on p. 19 of our last issue. The order revokes the Matrimonial Causes at Assizes Order, 1922, and sets out the classes of matrimonial causes which may be tried and determined at Assizes. These are (A) undefended causes within the meaning of the Matrimonial Causes Rules, 1937, and (B) causes brought or defended under R.S.C., Ord. XVI, Pt. IV, relating to Poor Persons. The first of these classes needs some explanation. The Matrimonial Causes Rules, 1937, defines an undefended cause as "a matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out," but the term does not include a cause in which (A) the court is asked to exercise its discretion under s. 178 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, or (B) relief is sought under s. 176 (*d*) of that Act or s. 7 (1) (*b*) of the Matrimonial Causes Act, 1937. Both the sections of the Act of 1925 have been redrafted and appear in a new guise under ss. 4 and 2 respectively of the new Act. The former relates to cases of connivance, condonation, etc., the latter to petitions for divorce founded on insanity. Section 7 (1) (*b*) of the Act of 1937 relates to insanity and mental deficiency as grounds for nullity of marriage.

Tithe Circular: Rate Income Compensation.

A CIRCULAR (No. 1668) had recently been sent by the Minister of Health to rural district councils on the subject of grants payable to rating authorities in respect of the loss of rate income from tithe rent-charge, in accordance with the provisions of s. 25 of the Tithe Act, 1936, and the Fifth Schedule thereto. With regard to the grant for the period beginning 1st October, 1936, the Minister states that he is unable to pay the further small balances of grants pending the issue of directions in regard to the manner in which the total amount of grant payable for any period is to be distributed among rating authorities. But he hopes to be in a position in the near future to issue these directions, which he is required to give under para. 3 of the Fifth Schedule, after consultation with the associations of local authorities. It has, however, been decided to make payments at an early date to rural district councils on account of the grant payable in respect of the first half of the twelve months beginning on 1st October, 1937. These payments, like those already made on account of the grant for the period of twelve months beginning on 1st October, 1936, will be made on the understanding that adjustments which may be found necessary when the actual grants have been determined will be made in connection with subsequent payments under the Act. These provisional grants, it is stated, will normally be an amount approximately equivalent to 45 per cent. of the amount realised by the collection of rates assessed on tithe rent-charge for the standard year 1935–36 in the area of the authority. Regard will be paid to any alterations of area which have taken place after 31st March, 1936.

The Characteristics and Functions of a Profession.

THE Finance Act, 1937, s. 19, makes provision for a national defence contribution of the profits of a trade or business, but by sub-s. (3) exempts professional earnings to the following extent: "The carrying on of a profession by an individual or individuals in partnership shall not be deemed to be the carrying on of a trade or business to which this section applies if the profits of the profession are dependent wholly or mainly on his or their personal qualifications. Provided that for the purpose of this sub-section the expression 'profession' does not include any business consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts."

The word "profession" in its modern meaning is applied to an occupation one professes to be skilled or learned in, or a vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs or business of others as distinct from the purely mechanical work connected therewith. Up to nearly the end of the nineteenth century the word "profession" was confined chiefly to the professions of divinity, law, medicine and arms.

A profession has been defined as a trade which is organised for the performance of functions. It is not simply a collection of individuals who get a living for themselves by the same kind of work. Nor is it merely a group which is organised exclusively for the economic protection of its members, though that is nominally amongst its purposes. It is a body of men who carry on their work in accordance with the rules designed to enforce certain standards, both for the better protection of its members and for the better service of the public. Its essence is that it assumes certain responsibilities for the competence of its members, or the quality of its wares, and that it deliberately prohibits certain kinds of conduct on the ground that, though they may be profitable to the individual, they are calculated to bring into disrepute the organisation to which he belongs.

Professions have been divided by Sidney Webb into five classes, each class possessing certain features in common:—

(*a*) Learned professions, e.g., law, medicine, teaching; formerly connected with ecclesiastical authority, the practitioners of which render personal service only.

(*b*) Technicians of industry, e.g., engineers, architects, surveyors, chemists; all of which started as scientific societies for the purpose of improving technical processes.

(*c*) Technicians of the office, e.g., accountants, secretaries, actuaries; each with its own professional association.

(*d*) Manipulators of men, e.g., managers, superintendents, foremen.

(*e*) Professional artists, e.g., painters, actors, authors, sculptors.

The object of professional rules is to impose on the profession itself the obligation of maintaining the quality of the service, and to prevent its common purpose being frustrated through the undue influence of the motive of pecuniary gain upon the necessities or cupidity of the individual.

Competence in a profession is secured partly by pecuniary incentives; partly by training and education; and partly by the acceptance on the part of those entering the profession of the traditional obligations of their profession as part of the normal framework of their working lives.

The difference between trade and a profession is clear. The essence of the former is that its only criterion is the financial return which it offers to the individuals concerned. The essence of the latter is that though men enter it for the sake of a livelihood, the measure of their success is the service which they perform, not the gains which they amass. They may, as in the case of the successful doctor, grow rich, but the meaning of their profession both for themselves and for the public is not that they make money but that they make health, or safety, or knowledge, or good government, or good law. They depend on it for their income, but they do not consider that any conduct which increases their income is on that account good.

The chief feature of a profession which distinguishes it peculiarly from trade is its public usefulness and public worth. A doctor is concerned with the health of the public, physically and mentally, the lawyer with the promotion of law and order and the rights of individuals. A professional certificate given by a doctor or a lawyer is *primâ facie* evidence of truth and reliability, and is recognised as such in a court of law. And so long as a profession keeps in the forefront the obligations it owes to society and enforces those obligations on its members by precept, example, and discipline, so long will it remain a profession.

The characteristic feature of professional self-government is the development within its organisation of rules of conduct which are enforced on its members; the development of professional ethics is perhaps one of the best results of professional organisation. These rules relate either to the conduct of professionals to each other or to their conduct towards the community in general. The rules relating to the conduct of members, *inter se*, generally forbid competition and advertisement, discourage the adoption of unorthodox views, and prevent the association with unqualified persons of their own profession, and even qualified persons of allied professions. These rules tend to good feeling and the maintenance of a high standard of honour between members of the profession. The rules relating to the conduct towards the community in general, seek to distinguish between what is permitted to a professional from that which is permitted to a business man. There is an insistence on a profession being regarded as a vocation founded upon specialised educational training, the purpose of which is to supply disinterested counsel and advice to others for a direct and definite compensation, wholly apart from expectation of other business gain.

Business men may compete with one another in price and quality and use the arts of advertising in selling their goods. They may enter into secret understandings with others with regard to the sharing of profits, and will endeavour to prevent anyone else from making use or profit of any new invention or discovery. Professional men, on the other hand, are always assumed to gain their livelihood by the sole use of their faculties, and, except in regard to a limited class of assistants, they are prohibited from having any interest in the things which they recommend to their clients. Any receipt of commissions from other professionals, or from business enterprises, is against professional etiquette. In his private relations with individual clients, the professional man is prohibited from using the influence that he gains as a professional man to extract from his client anything more than his recognised remuneration. Any attempt to use his professional position as an opportunity for injuring his client is condemned as infamous conduct. So long as he is professionally engaged, the member of a brain-working profession is required to think only of the advantage of his client, and not of his own interests. In the higher ranges of professional ethics he is expected to risk, and even to sacrifice, his health or his life in the performance of his professional duty, an expectation which never exists in business.

Usually, unprofessional conduct of a member consists of acts or omissions which are likely to injure the interests of other members, or to lower the dignity of the profession, and usually comprises (A) advertising; (B) holding offices or engaging in other businesses which are not incidental to or consistent with the profession; (C) touting for work; (D) giving commissions or presents for the introduction of

business; (E) accepting fees less than the recognised minimum fees.

A profession has, in addition to the penalties of suspension or expulsion, very effective means of punishing an erring or obstinate member. It may publish a statement of his unprofessional conduct in its official organ; further, professional disapproval or even ostracism, e.g., the refusal of one man to meet another in consultation professionally, is generally sufficient to prevent a member from failing to observe the customs of his profession, since professional disapproval or ostracism has a tendency to spread to the general public to the detriment of the delinquent member; hence the respect paid to and the power of professional etiquette.

Transfer of Administration Actions to Bankruptcy.

THE administration of the insolvent estate of a deceased person may, of course, be effected either in the Chancery Division or in bankruptcy. It is proposed to consider in this article the circumstances in which an administration which is already pending in Chancery will be transferred to bankruptcy.

This inquiry is prompted by the recent case of *In re Brooks: Fletcher* v. *Brooks* (*The Times*, 29th October, 1937), which came before Crossman, J., on 28th October last, and in which an application for such a transfer was made.

Section 130 (1) of the Bankruptcy Act, 1914, provides that any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy.

This provision is qualified, however, by sub-s. (3) of the section, which provides as follows:—

> "A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may, when satisfied that the estate is insufficient to pay its debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon the last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor."

There have been several decisions as to the circumstances in which a transfer should be ordered or refused. The leading decision is *Re Baker: Nichols* v. *Baker* (1890), 44 Ch. D. 262, C.A. The facts in that case were that one of the executors claimed to be a creditor of the testator's estate for a considerable amount, which she claimed to retain out of the estate. In bankruptcy the right of retention would be lost, but the court nevertheless refused to transfer the proceedings from Chancery to bankruptcy. It was emphasised in this case that the power to transfer is entirely discretionary. Lindley, L.J. (at p. 272) said: "Now is it right that in consequence of these distinctions whenever there is an insolvent estate being administered in Chancery it should be transferred to the Bankruptcy Court? If that was what Parliament meant, it would have used very different language and would not have said 'may' so often and contrasted it with 'shall.'"

In the later case of *Re Kenward* [1906] W.N. 16, Kekewich, J., decided that, unless there are special reasons against a transfer, a transfer will be made. This decision does not seem to accord with other decisions, however. It was laid down in *Baker's Case* and in other cases that the predominant considerations are those of convenience, delay and expense. For instance, it would be easier to transfer proceedings from the Chancery Division in London to the local county court exercising jurisdiction in bankruptcy in a case where a man died in the North of England than if the testator had died in or near London.

Again, the fact that judgment has been given and inquiries are proceeding is a good ground for retaining the proceedings in the court in which they are commenced.

It is somewhat unfortunate that in *Fletcher* v. *Brooks*, *supra*, the effect (if any) of the 1925 legislation on the question as to how the judge shall exercise his discretion was not considered. Before the passing of the Administration of Estates Act, 1925, different rules prevailed in administration proceedings from those in bankruptcy. Much of the difference has now been removed, because by s. 34 of that Act and Part I of the First Schedule the rules of bankruptcy are made applicable to administrations in Chancery as regards the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities. But, even now, not all the rules of bankruptcy apply. For instance, the rules which go to swell the assets do not apply, such as the taking of property under the reputed ownership provisions, avoidance of executions and the limitations of a landlord's right of distress. Since, however, with these few exceptions, the rules of administration are the same in Chancery as in bankruptcy, it is suggested that it will be more difficult to establish that there will be any more convenience in bankruptcy proceedings than in Chancery proceedings.

In *Fletcher* v. *Brooks* the facts were that the testator's estate was being administered in the Manchester District Registry, and application was made by a creditor to transfer the proceedings to the Stockport County Court, which was the appropriate court for bankruptcy jurisdiction. Judgment for administration, with usual accounts and inquiries, had been directed. Crossman, J., refused to transfer the proceedings, but gave the creditor leave to attend the administration action at her own expense.

It would appear on the whole that the Administration of Estates Act has not altered the position. Considerations of convenience, delay and expense are not substantially affected by the Act in any way. Moreover, the fact that assets would be available in bankruptcy which would not be available in Chancery was not considered a ground for transfer in *Re Baker*, and would appear in the light of that decision to be irrelevant to the question of how the judge shall exercise his discretion.

When an action is transferred from Chancery to bankruptcy the costs incurred in the administration action will be payable out of the testator's assets, and there is authority for saying that they will be taxed as between solicitor and client. The report in *The Times* mentioned above is not quite accurate as to costs. The order actually made was that no transfer be made, but the creditor applying to transfer should have liberty to attend the administration proceedings at her own expense. Only the costs of the plaintiff and defendant to the administrative proceedings were ordered to be costs in the action.

Mr. John Reid Barber, retired solicitor, of Craven Hill W., left £200,185, with net personalty £200,037. He left £1,000 to the London Orphan School and Royal British Orphan School, Watford, £1,000 to the Shaftesbury Homes and Arethusa Training Ship, £1,000 to Dr. Barnardo's Homes, and, after other bequests, the residue of the property to King Edward's Hospital Fund for London.

Company Law and Practice.

Private Companies.

Some time ago I referred to the increasing practice of forming a company, ultimately intended to be a public company, as a private company and subsequently transforming it into a public company when the time had arrived for a public issue of shares to be made. One reason I suggested for this course was that in this way certain savings of stamp duty could be effected, but there are doubtless other reasons for the growing popularity of this practice and I propose this week to consider the provisions of the Companies Act which define the position of private companies and distinguish them from public companies, and which may possibly render it a satisfactory course to adopt.

The expression "private company" is defined by s. 26 as a company which, by its articles, restricts the right to transfer its shares and limits the number of its members to fifty, excluding employees or ex-employees, and which prohibits any invitation to the public to subscribe for any shares or debentures of the company. All the qualifications, therefore, of such a company exist in the articles, and the memorandum of association may be equally applicable to both a public company and a private company, and all that is necessary to effect a metamorphosis from the one to the other is a change in the articles, i.e., a special resolution of the company, if the other conditions are such that the metamorphosis is possible. Such a company, and this, perhaps, is worth remark, is nevertheless "a public company" within the meaning of the Apportionment Act, 1870. Though a private company is defined by s. 26, the expression first occurs in s. 1, which deals with the memorandum of association and provides that an incorporated company may be formed with or without limited liability by any two or more persons "in the case of a private company."

Section 26, then, is the first section of the two sections under the sub-heading "Private Companies" I have already referred to; the next section provides that if a company does alter its articles so as no longer to fulfil the conditions laid down by s. 26, it shall cease to be a private company on the day of such alteration and must deliver within a certain time to the Registrar of Joint Stock Companies a prospectus or statement in lieu of prospectus. This requirement would cause no difficulty in the cases above referred to for the whole object of the transaction is finally to issue a prospectus and to allot shares to the public. Section 28, which declares the consequences of carrying on business by a company with fewer than the proper number of members, re-affirms the provisions of s. 1 that in the case of a private company two members are sufficient.

Section 36 provides by its second subsection that the rule that a company may not before its statutory meeting vary the terms of a contract referred to in the prospectus or the statement in lieu of prospectus without the approval of the statutory meeting shall not apply to a private company. Even without this express provision the section could not presumably have applied, for, as is provided by s. 40, no prospectus or statement in lieu of prospectus need exist in the case of a private company nor, as we shall see later, in the Act need a statutory meeting be held. The section, however, is clearly only of value to a company incorporated and intended to continue trading as a private company.

Restrictions on the commencement of business contained in s. 94 are not applicable to private companies by sub.-s. 7 (*a*) of that section. Shortly put, these restrictions are that a company which has issued a prospectus is not to commence business or exercise any borrowing powers until (A) shares have been allotted to an amount not less than the minimum subscription; (B) every director has paid on the shares he has taken or contracted to take what he would have had to pay if he had applied for the shares on his application and on their allotment; (C) the secretary has delivered to the Registrar a statutory declaration that these conditions have been complied with. The conditions are the same in the case of a company which has not issued a prospectus except that condition (A), in that case is that the statement in lieu of prospectus, has been delivered to the Registrar. In addition to the prohibition of commencement of business and the exercise of borrowing powers until the date on which the company becomes entitled to commence business, the section also provides that any contract made by the company before that date shall be provisional only and shall only become binding on the company on that date. As I pointed out before, any provision relating to the issue of a prospectus or statement in lieu of prospectus is strictly speaking inappropriate in the case of private companies, but no question is left open by the express enactment that this section shall not apply to private companies, and it is not impossible to imagine cases where it is desired that a new company may be in a position immediately on its incorporation to commence certain business, such as, for example, to enter into contracts of different kinds and that such contracts entered into at any date after incorporation shall be binding on it at once, so that possibly a more favourable moment may be waited for in order to make a public issue. In this connection, it is perhaps interesting to quote the remark in the notes to this section in "Buckley": "The Section enacts not that the company shall not commence *its* business but that it shall not commence *any* business. Its effect is that all contracts whether express or implied are to be read as if they contained a provision that the company shall not be bound unless and until the company is entitled to commence business."

Every company has to make an annual return, in the case of a company with a share capital complying with the requirements of s. 108, and in the case of other companies complying with those of s. 109. In addition to those requirements, s. 110 (3) provides that except in the case of a private company the return must include a written copy certified by a director or the manager or the secretary of the company to be a true copy of the last balance sheet which has been audited by the company's auditors, including any document required by law to be annexed thereto, together with a copy of the report of the auditors. No such obligation exists in the case of a private company. It is perhaps in connection with this section convenient to consider s. 130, which provides that, except in the case of a private company, a copy of every balance sheet, etc., which is to be laid before the company in general meeting under s. 129, together with the auditor's report, is to be sent to all persons entitled to receive notices of general meetings of the company seven days before the date of the meeting, and any member not entitled to receive such notices and any debenture-holder of the company is to be entitled to be furnished on demand without charge with such information. In the case of a private company, a member is only entitled to be furnished on request with a copy of the balance sheet and the auditor's report at a charge not exceeding sixpence for every hundred words, but these again are privileges which will only be of advantage to a private company which is carrying on its business in a regular way as such. In the case of such a company, however, it is provided by s. 111 that it must send with the annual return a certificate signed by a director or the secretary to the effect that the company has not ceased to be a private company by reason of its having failed to comply with the requirements of private companies.

Another important section which it is provided shall not apply in the case of a private company is s. 113, which is the section which imposes the necessity for the statutory meeting. This meeting is a general meeting of the company which must be held not less than one month and not more than three months after the date on which the company is

entitled to commence business and before which the "statutory report" giving the particulars required by that section must be sent to all the members of the company, a copy of which must be delivered to the Registrar. As we have seen, a private company does not have a date on which it is entitled to commence business, and any possible advantage in the exemption from these requirements of holding a meeting within a certain time is really consequent upon the exemption of private companies from the provisions as to that date.

It does, however, have the effect that a company incorporated as a private company, even where it is intended subsequently to have a public issue, is enabled to lie dormant for an indefinite time after incorporation.

The provisions of s. 133 that no person who is a partner of or in the employment of an officer of the company may be the auditor of a company does not apply to private companies, and there are similar relaxations of the provisions as to directors contained in ss 139 and 140. The former of these sections requires that every company shall have at least two directors, and does not apply in the case of a private company, nor do the restrictions of the latter section on the appointment of directors or the naming of directors in a prospectus.

The sections to which I have referred are the principal ones which distinguish private companies from public companies, and it may be of some interest to have the various provisions set out in this way. From the practical point of view, however, it appears from this short account of the position that possibly the two greatest advantages conferred by the Act itself, apart from any question of stamp duty, on the practice of forming a company as a private company and subsequently turning it into a public company, are the two privileges above referred to of being able to commence business immediately upon incorporation and of being able to let the company lie dormant for an indefinite time without holding a statutory meeting or delivering a statutory report, so that the actual incorporation of the company can be completed without entering into any of the considerations which determine what is an auspicious time for a public issue.

A Conveyancer's Diary.

Surrender of Life Interest to Remainderman. Trustees' Liability for Future Estate Duty.

I DEALT with this subject in my articles on "Breaking Settlements," 76 SOL. J., 76, 90.

There is, however, a further point which I should like to emphasise in connection with cases where there has been a release by a tenant for life of his life interest to the remainderman.

The question arises when there has been such a release, and the trustees are asked to hand over the funds to the remainderman.

I think that it is generally understood that estate duty will in such a case be payable on the death of the tenant for life if that should occur within three years and the remainderman has taken and retained possession to the exclusion of the tenant for life and no interest has been reserved to the latter and no benefit agreed to be conferred upon him. But I must refer to the relevant enactment. Section 11 (1) of the Finance Act, 1900, provides as follows:—

"In case of every person dying after the 31st day of March, 1900, property, whether real or personal, in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purposes of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased notwithstanding that that estate or interest has been surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting or disposition was *bonâ fide* made or effected three years before the death of the deceased and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid and of any benefit to him by contract or otherwise."

In my former articles I expressed the view that where there was a release by the tenant for life and the trustees were asked to part with the funds to the remainderman the trustees would not be liable for any future estate duty becoming payable under that section. At the same time I said that it would not be safe for trustees to act upon the assumption that that view was correct, and should in all such cases seek the protection of the court. It is well known that the officials of the Estate Duty Office do not agree with the opinion that I have expressed, and until there is a decision upon the point trustees will never be able to give effect to the release by parting with the funds.

It might be suggested that trustees could always retain sufficient to meet the claim for duty if one should arise under this section. I do not see how trustees are to tell what amount they ought to retain. They cannot foretell what the rate of duty will be when the tenant for life dies, and even if the rate of the duty remained the same as at the date of the release they cannot possibly know what property there will be which will have to be aggregated with the trust funds for the purpose of arriving at the rate of the duty.

It will be seen that, put shortly, in order that duty will not become payable, the following conditions must be fulfilled: (1) The tenant for life must live for three years after the release; (2) the remainderman must have taken *bonâ fide* possession and enjoyment of the property immediately after the release to the entire exclusion of the tenant for life and of any benefit to him by contract or otherwise; and (3) the remainderman must have retained such exclusive possession or enjoyment up to the date of the death of the tenant for life without any benefit to him by contract or otherwise.

I think that I dealt fully enough with (1) and (2) in my former articles, but I may say here that it is obvious that the trustees would not necessarily know whether there had been any benefit to the tenant for life "by contract or otherwise." The remainderman might, without the knowledge of the trustees, have contracted to pay the tenant for life an annuity not charged upon the trust estate but being merely a personal undertaking, or in some other way have contracted to benefit the tenant for life. If that were so the section makes duty payable on the death of the tenant for life however small the benefit might be.

The point which I did not stress sufficiently in my former articles arises under (3).

Suppose that the remainderman does assume complete possession and enjoyment immediately after the release, and does retain such possession or enjoyment for some time, perhaps for years, but subsequently by deed or will gives the tenant for life a cottage on the estate, or a life interest in such a cottage, or grants a lease (at less than a rack rent) to the tenant for life of a cottage or of the sporting rights, or under a settlement of some of the investments representing the trust funds whereby the tenant for life took some benefit, then duty will become payable when the tenant for life dies. In the case of settled land, the trustees would not be liable (except as regards capital money in their hands) because the property would never have been vested in them, but they would be liable if the settlement were by trust for sale or the property were pure personalty.

Now it may be that after three years from the release the trustees might be satisfied that the remainderman had all

along had the enjoyment of the trust estate to the exclusion of the tenant for life and accept the assurance that there had been no benefit to the tenant for life by contract or otherwise: I do not see how they can possibly tell what might happen afterwards if they part with the funds.

The result of this seems to be that, upon the assumption that trustees are liable for future estate duty where there has been a surrender by the tenant for life to the remainderman, trustees can never part with the trust funds until the death of the tenant for life. That really is an absurd state of things, and, as I think, points strongly to my view being correct that trustees are not liable for future estate duty in such circumstances.

It is to be hoped that the question will be decided before long.

Landlord and Tenant Notebook.

Difficulties of Ensuring a Trade Monopoly.

A SHOPKEEPER negotiates for a lease of suitable premises; the intending lessor owns a number of other shops adjoining and near the one selected. The proposed tenant, while willing to defy, is anxious to avoid competition; the lessor (possibly with an eye on L.T.A., 1927, s. 4 (1) (*e*)—restrictions imposed by the landlord upon the letting for competitive business of other premises in the neighbourhood may reduce or even cancel compensation for goodwill) is willing to do what he can to promote a local monopoly. How is their common object to be achieved?

The first difficulty will be the defining of the scope of the tenant's business. The numerous authorities show that this is a task that requires care and patience and imagination. A short reference to one or two of them will illustrate the types of dangers to be avoided.

L.S.G. Ltd. v. *T. B. Lawrence, Ltd.* (1925), 70 SOL. J. 161, C.A., arose out of the letting of shops at the Wembley Exhibition of 1923. The agreement, contained in letters not framed, as the Court of Appeal pointed out, in lawyers' language, included this undertaking by the landlords: "We agree that there shall be no other souvenir shops, apart from your own." All applicants for shops had to state what they proposed to sell, and that of the plaintiffs had mentioned "souvenirs" as well as plate, jewellery, leather goods, glass, silver, and general fancy goods. The tenants found that one neighbouring shop, tenanted by a firm which had described its business as toys, etc., sold toys in the nature of souvenirs; likewise, tobacconists were selling souvenir pipes and pouches, and a tailor and haberdasher souvenir neckties and handkerchiefs. At first instance their action for damages succeeded, but the decision was reversed on appeal on the ground that if a shop were let for a purpose which would not ordinarily include the sale of souvenirs the undertaking to the plaintiffs would not be infringed.

Instances of such demarcation problems can be multiplied, e.g., a fried-fish shop is neither a fishmonger's business nor is it a restaurant (*Errington* v. *Birt* (1911), 105 L.T. 373); a motor showroom is not a garage (*Derby Motor Cab Co.* v. *Crompton* (1913), 29 T.L.R. 673); and the Court of Appeal in *Stuart* v. *Diplock* (1889), 43 Ch. D. 343, C.A., had occasion to point out the fallacy (acted upon in the court below) in the reasoning "All ladies' outfitters sell combinations, the defendants sell combinations, therefore the defendants are ladies' outfitters."

It is therefore not in a spirit of flippancy that I suggest that it is advisable, when drafting a lease designed to secure a trade monopoly, to consult not only a dictionary, but also a trade technical dictionary, and possibly the *Palaestra Logica* as well. But, having carefully defined the boundaries of the monopoly, the next difficulty is this; how is one to ensure that the protection will enable the covenantee to deal with competition at the hands of the landlord himself, purchasers of the reversion, tenants, assignees of tenants, and sub-tenants?

The position to-day is not as clear as one would desire. It is not possible to review all the authorities in one article, but one may take two of them, *Kemp* v. *Bird* (1877), 5 Ch. D. 974, C.A., and *Holloway Bros. Ltd.* v. *Hill* [1902] 2 Ch. 612, as illustrating the range of the possibilities. In the former, the plaintiff's lease contained a covenant by the lessor not to let other premises in the street "for the purpose of carrying on the business of an eating-house" (which was the business carried on by the plaintiff). When a few years later a rival establishment was set up next door, the plaintiff found that his competitor held of the same landlord, and that his lease forbade him to carry on on the premises any business whatsoever without the landlord's consent. But he also found that he had no remedy against either, for the landlord had not let the place for the purpose complained of, or indeed for any purpose, and the covenant said nothing about user. But in *Holloway & Co. Ltd.* v. *Hill*, tailors and outfitters successfully sued their landlord and a rival by virtue of a covenant not to let and not to permit the other shop to be used for the business of a tailor, the second defendant having actually covenanted not to use it otherwise!

An injunction was issued against the second defendant in the last-mentioned case; but note that the plaintiff was able to show that his competitor had had notice (having negotiated his lease through the landlord's agents) of the existence of some restriction—not necessarily of the particular restriction.

And since the above decisions, L.P.A., 1925, s. 199, has shaken the authority of *Patman* v. *Harland* (1887), 17 Ch. D. 353, on which the success of any proceedings taken against a tenant depends. I say "shaken," because the question whether *Patman* v. *Harland* has been disposed of by the enactment mentioned has been the subject of much debate, but has not been tested; which makes the position all the more unsatisfactory unless one is advising parties desirous of having their names immortalised in law reports.

Further, as against the landlord, the trend of the authorities shows that the aggrieved tenant, if he relies on a covenant not to "permit," may have a difficult task. For recently, such cases as *Wilson* v. *Twamley* [1904] 2 K.B. 99, C.A., *Berton* v. *Economic Alliance Investment Co.* [1922] 1 K.B. 742, C.A., and *Atkin* v. *Rose* [1923] 1 Ch. 522, have made it clear that the power to prevent must be clearly available; that a landlord does not permit or suffer acts of sub-tenants, whom he does not control.

This occasions the suggestion; why not give the tenant a remedy, at least against the landlord, irrespective of whether the latter by act or omission had anything to do with the establishing of the rival concern? This could be done by means of a covenant that no business of the specified kind shall be carried on on the premises named. Since the passing of L.T.A., 1927, s. 4 (1) (3), there is more inducement to a landlord to agree to such a course, for it is arguable whether he could be said to have imposed restrictions which he could not enforce in such a way as effectively to prevent competition. To illustrate the point, I may perhaps be allowed to cite the instance of the lady of advanced views who astonished her friends, particularly those also holding advanced views, by objecting not to the word "obey" in the marriage service, but to the words "love" and "honour." Her reasoning being that she could confidently undertake obedience, but whether she could fulfil promises to love and honour depended on circumstances which she might not be able to control.

An absolute covenant that no business of the same kind as that of the tenant shall be carried on on other premises belonging to the landlord, then, seems to be the best solution; for the covenantee can carry out his undertaking by absolute conditions to the desired effect inserted in any leases he grants.

Examples of absolute covenants are few, and I know of none by which a particular business has been protected; but two cases show that the device is a workable one.

In *Wilkinson* v. *Rogers* (1863), 12 W.R. 119; 284, C.A., a tenant covenanted not to use the demised premises for any business as long as certain specified adjoining properties were not converted into shops. The issue in the case was whether this conversion could be effected by user only, without structural alterations. It was held that it could, so that when one neighbour set up as a photographer displaying wares for sale as well as for exhibition, in a window facing the street, the covenantor was released. More in point is *Prothero* v. *Bell* (1906), 22 T.L.R. 370, in which the operation of an absolute covenant was expressly examined. The action was for forfeiture. The plaintiff was a leaseholder of property on the Bedford Estate. In 1897 he let the house to the defendant, who covenanted not to use or to permit the premises to be used for any illegal or immoral purpose, etc.—but the covenant went on: "that no act, matter or thing whatsoever shall at any time during the said term be done on the said premises which may be or tend to the annoyance of the lessor or the superior landlord . . . or the lessees and occupiers of any houses on the neighbourhood of the premises hereby demised." In 1906 the defendant sublet the house furnished to a lady who covenanted with him not to carry on nor permit anything that might be or cause annoyance to him or her neighbours. Soon afterwards, the house became a brothel. It was argued that the defendant had not permitted this, so that *Wilson* v. *Twamley*, *supra*, protected him. But it was held that that authority did not apply to the second part of the covenant, under which the plaintiff had not to prove permission. This case, I submit, shows us the way to draft leases designed to promote trade monopolies.

Practice Notes.

DOCUMENTS TENDING TO CRIMINATE.

"A party will not be compelled to produce documents which he swears will, or may, tend to criminate him" ("The Yearly Practice," 1938, p. 506). The document must be disclosed in the second part of the 1st. Sched. to the affidavit of documents (*op. cit.*, p. 492), and the deponent should take his objection on oath in his affidavit, stating that upon this ground he objects to produce the document (see *per* A. L. Smith, L.J., in *Spokes* v. *Grosvenor Hotel Co.* [1897] 1 Q.B. 124, at p. 133). The principle is the same where a party is interrogated; he may decline to answer upon the ground that his answer might tend to criminate him (*op. cit.*, p. 476; see also *per* Field, J., in *Munster* v. *Lamb* (1882), 10 Q.B.D. 110, at p. 111).

Sitwell v. *Sun Engraving Company, Limited* (1937), 54 T.L.R. 132; 81 Sol. J. 942, was an unusual case. The plaintiff, Osbert Sitwell, alleged that a poem published by the defendants in "Calvacade," and entitled "National Rat Week," involved an infringement of his copyright of an unpublished poem, in six stanzas. The defendants took out a procedure summons asking for an order to inspect the whole of Mr. Sitwell's poem, alleging that it would be contrary to public policy to protect the copyright in this poem. He was willing to disclose those parts of the poem which the defendants had published, but he wished to cover up certain other parts on the ground that if they were published he might expose himself to an action for libel. Clauson, J., ordered inspection of the whole poem within twenty-one days, failing which the action would be dismissed, stating that the plaintiff must run the risk of being sued for criminal libel. Mr. Sitwell appealed.

His claim related to an infringement of six stanzas only, not to the whole poem. The defence alleged that if the other parts of the poem contained offensive matter, the entire poem, including the inoffensive part, became disentitled to protection. He was entitled, said the Court of Appeal, to cover up those other stanzas and to proceed on his pleaded case.

"On well understood principles," observed Sir Wilfrid Greene, M.R., "he is entitled to say: 'I decline to produce them for inspection, because they would tend to incriminate me,' and his oath to that effect is a thing which must be taken as conclusive and the court will not inquire into it. That is the well understood practice" (at p. 133). "The plaintiff," he continued, "cannot be made out of his own mouth, in answer to interrogatories, or by production of documents in his possession, to incriminate himself." The case must be dealt with on the pleadings; by the judge's order in this case the plaintiff had been "wrongly ruled out from establishing what is his pleaded case." The defendants, said the Court of Appeal, were not entitled to call on the plaintiff to incriminate himself. Of course, as Romer, L.J., pointed out (at p. 134), had the plaintiff asserted that the copyright in the *whole* of the poem had been infringed, he would not have been allowed to refuse to disclose the manuscript and at the same time, proceed to trial—whether it incriminated him or not. But here, the only issue was as to the six stanzas; these, and these only, the plaintiff must disclose.

EVIDENCE OF FOREIGN ACTS OF STATE.

Foreign acts of State are proved in manner provided by s. 7 of the Evidence Act, 1851. By this section proclamations, treaties and other acts of State of a foreign State or a British colony may be proved either by examined copies *or* by copies purporting to bear the seal of the State or colony to which they belong: "Taylor on Evidence," 12th ed. (1931), vol. 2, p. 971, s. 1528.

The section is set forth in full in "Taylor," *op. cit.*, vol. 1, p. 13, s. 10. It applies, further, to judgments, decrees, orders and other judicial proceedings in a foreign State or British colony and also to affidavits, pleadings and other legal documents. In all these cases the authenticated copy must simply purport to be sealed with the seal of the foreign or colonial court to which the original document belongs, or if the court has no seal, to be signed by the judge, who shall attach a written statement that the court has no seal. If the copy *purports* to be thus sealed or signed, it becomes admissible in evidence without proof of the authenticity of the seal or signature.

In *Finska Angfartygs A/B and Others* v. *Baring Brothers & Company Limited* (1937), 54 T.L.R. 147; 81 Sol. J. 1022, the question arose whether copies of certain orders were admissible which had been given during the Great War by a Government Committee in Russia. It appeared that no examined copies were in existence, nor could any copies be found authenticated in the manner provided by s. 7 of the Evidence Act, 1851. The plaintiffs had been unable to ascertain whether the originals were still in existence and the Soviet Government refused their assistance.

Luxmoore, J., departed from what appears to be the plain meaning of a very clear and comprehensive section by holding that the provisions of the Act were not exhaustive. "In any case," he said, "where it is impossible to obtain from the proper source examined copies or the form of proof required by the Act, the best secondary evidence of the original orders can be given" (at p. 150).

Under the old practice Lord Ellenborough refused to admit the kind of evidence that was here admitted. In *Richardson* v. *Anderson* (1805), cited in *Buchanan* v. *Rucker* (1807), 1 Camp. 62, at p. 65, note (*a*), the defendant produced a book, purporting to be a collection of treaties concluded by America, which was declared to be published by authority there, as a regular copy of the archives in Washington; the American Minister resident at this Court would have proved that it was "the rule of his conduct." Lord Ellenborough refused to admit the evidence; such a copy, he held, was necessary,

as was proved to have been examined with the archives in America. He would not have admitted, he declared, a book of treaties with Spain, although proved to have been printed by the King's Printer in Spain.

Thus the method of the *examined copy* appears to have been the way of proving such documents at common law; the Evidence Act provided a less cumbrous alternative, viz., the production of a copy which *purported* to be sealed with the seal of the foreign State or court. There is no provision in the Act for any other method of proof. Convenient as was the course taken by Luxmoore, J., in the *Finska Case*, it is unsupported—so it is respectfully submitted—either by authority or by the plain words of a comprehensive section.

Our County Court Letter.

VALIDITY OF DISTRAINT.

In *Butler* v. *Davies*, recently heard at Birmingham County Court, the claim was for £10 as damages for an excessive distress and for the return of the goods seized. The plaintiff admitted that he owed £2 17s. 6d. for rent, but his case was that the defendant, a certified bailiff, had seized goods of the value of £30. The sum of £1 4s. had been tendered, and the balance was promised for the following Saturday. A form had been signed, by the plaintiff's wife, authorising walking possession at 6s. a day. Within twenty-four hours, however, the defendant removed a three-piece suite, which had cost £14 19s. 6d., and a perambulator, which was being bought on hire-purchase for £5 17s. The defendant's case was that there had been evidence of an impending clandestine removal, as the household goods were packed up ready in the perambulator. The furniture had been sold by auction, at which there was a fair attendance, and the amount realised was only £2 7s. 6d. The reason was that furniture bought on hire purchase was worth little more than half the price. His Honour Judge Dale observed that, in addition to the rent, the fees and expenses were not less than £2, so that it was necessary for the defendant to seize goods which would realise between £4 and £5. The defendant's estimate was corroborated by the price realised, and the goods seized were reasonably of the value required. On the question of irregularity, the tenant had signed a document giving the defendant a right to constructive possession, under which a man could call every day to see that the goods had not been removed. There was evidence to support the defendant's inference as to the impending removal. Judgment was given in his favour, with costs.

INTERPLEADER OF FARM STOCK.

In a recent case at Bury St. Edmunds County Court (*Austin* v. *Green*), the issue was whether goods seized by the Sheriff of Suffolk were the property of the claimant or the execution creditor. The claimant's case was that he had been employed by the judgment debtor to do ploughing and seeding at so much per acre. On the 30th July, 1937, the judgment debtor sold his farm to the claimant for £850. The sale included everything except the crops of wheat, barley and sugar beet. A stamped receipt was signed, and £100 was paid as a deposit, as completion was not due until Michaelmas, 1937. The claimant was let into possession, however, in order to prepare the farm for letting on the 11th October. On the 27th September judgment was signed for £306 and execution was levied on the 30th September on, *inter alia*, the horses, tumbrils, etc., set out in the inventory of property comprised in the sale to the claimant. It was pointed out for the execution creditor that £250 had been paid into court, as the value of the things claimed. This implied that only £650 was being paid for the house, farm buildings and 100 acres. Expert evidence was given that it was rare for live and dead stock to pass on the sale of a farm, or for a farm to be sold "lock, stock and barrel." It was submitted for the execution creditor that the property had not passed to the claimant, as the execution had been levied before the completion of the contract. The receipt mentioned only "This farm, containing house, buildings and 100 acres of land." Oral evidence was not admissible that the contract included also the chattels claimed. His Honour Judge Hildesley, K.C., observed that, although the claimant had only paid £100 he was liable for the balance and would receive a conveyance on completion. The claimant's case had been made out, and he was entitled to an order with payment out of the money in court, and costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

DEPENDENCY OF WIDOW.

In *Myers* v. *Steel Peech & Tozer, Ltd.*, at Rotherham County Court, the applicant claimed £300 on the ground that she had been totally dependent upon her deceased husband. The latter had had a fatal accident, while working as a shunter, and his earnings had been £3 3s. 5d., of which he allowed the applicant £2 5s. A daughter, aged twenty-seven, was earning £3 a week, and had paid all her earnings to her mother up to the age of twenty-one. Since then, however, she had only paid 15s. a week to cover the cost of meals and laundry. The respondents' case was that the 15s. was only for breakfast and supper, and was more than sufficient therefor. It was also doubtful whether the applicant had only received 15s. a week from her daughter for the last six years. On the ground that there was only partial dependency, it was submitted that an award of £250 would be adequate. An award was made of £275.

PAINTER'S FALL FROM LADDER.

In *Pickford* v. *E. K. Youell & Sons*, at Coventry County Court, the applicant was a painter, and had fallen from a ladder on the 25th June, 1936. He was in hospital until the 6th August, 1936, and compensation was paid at the rate of 30s. a week until the 25th January, 1937, when it was reduced to 15s. a week. The payments ceased entirely four weeks later, but this was without the knowledge of the respondents' insurers, who were willing to continue payments at 15s. a week. The applicant's medical evidence was, however, that he was a nervous wreck and still totally incapacitated. The respondents' medical evidence was that the applicant was now in a better condition than he had ever been since the accident. Work had been offered to the applicant, and he was still at liberty to take it. His Honour Judge Hurst made an award on the basis of total incapacity from the 23rd February, 1937, with costs.

ADDED PERIL IN COAL MINE.

In *Thomas* v. *Highley Mining Co. Ltd.*, at Kidderminster County Court, the applicant's case was that, on the 18th July, he was required to do an extra turn in the pit. A fall of roof had occurred, and a quantity of rock blocked the way of some loaded tubs, which had to be hauled up a gradient. There were no empty tubs coming down, owing to the obstruction, and it was necessary to scramble up the slope to fetch the rope back. Instead of doing so, the applicant rode up on the front of the loaded tubs. This was admittedly a breach of regulations, but the applicant had acted in the employers' interest and within the scope of his employment. There was no permanent disability, and therefore compensation could not be claimed under the Workmen's Compensation Act, 1925, s. 1 (2). Nevertheless, the case came within the exception specified by Lord Atkinson in *Barnes* v. *Nunnery Colliery Co. Ltd.* [1912] A.C., at p. 49. His Honour Judge Roope Reeve, K.C., upheld a submission that there was no case to answer.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Sale of Goods.

Q. 3532. A commercial traveller engaged by a firm of manufacturers calls upon X & Co. with a view to soliciting an order for the purchase of goods. He tells X & Co. that Mr. Jones, whom they know very well, had recommended him to X & Co. In the belief that that statement was correct, X & Co. show their interest in the goods in question; they inspect them, make their tests in regard to quality, make comparisons in regard to price and are thoroughly satisfied with them, and give to the traveller a written order for a quantity of the goods. Subsequently X & Co. learn that the traveller's statement about Mr. Jones was quite untrue, and that Mr. Jones had never even heard of the traveller or his firm. X & Co. thereupon cancel the order which they had given to the traveller on the sole ground that the statement made by him in regard to Mr. Jones was untrue. Are X & Co. entitled in law—

(A) to cancel the order before the goods are delivered?

(B) where the order is not so cancelled, to refuse to accept the goods, even though the goods are thoroughly satisfactory in every way?

(C) to refuse to pay for the goods after delivery and acceptance if they had made no previous cancellation?

A. The materiality of the representation with regard to Mr. Jones is not very obvious, but apparently X & Co. made it a condition of the contract. In view of the breach of this condition, X & Co. are entitled—

(A) to cancel the order before the goods are delivered;

(B) to refuse to accept delivery.

X & Co. are not entitled, however, to refuse to pay for the goods after delivery and acceptance, if they had made no previous cancellation.

Annulment of Bankruptcy.

Q. 3533. A client of ours many years ago was adjudged bankrupt. Some years later the adjudication was annulled on the ground that our client had paid into court a sum sufficient to pay his creditors in full. A sum of money remains in the hands of the Official Receiver because many of the creditors have disappeared and have not claimed their dividends. Our client now desires to apply to the court for the money to be repaid to him on the ground that there is no practical possibility of these creditors or their personal representatives being found. The case of *In re Dennis* [1895] 2 Q.B. 631, is distinguishable because in that case the creditors did not tender a proof. In this case the man's creditors have in fact proved their debts. It has been suggested to us that the money is vested in the creditors and the court has no power to order it to be repaid. We shall be glad to have your view.

A. The fact that the debts have been proved distinguishes the case from *In re Dennis*, quoted in the question, and causes the Statute of Limitations to run against the creditors. After six years from payment in, the ex-bankrupt can therefore claim repayment.

The Definition of Main Timbers.

Q. 3534. A (a landlord) covenanted in his lease with B (the tenant) to keep "at all times during the said term the main walls, roofs and main timbers in good and tenantable repair." In B's repairing covenant contained in the lease, B covenanted to keep "the whole of the said premises including all windows, glass in the windows, skylights, and inside plastering of walls and lessor's fixtures (but except the rest of the main walls and roofs and main timbers) in good and tenantable repair and condition." A notice has been received from the local authority stating that the wooden floors of the property require repairing, and A contends that the floors are not main timbers, and therefore, the liability for repair is not the landlord's. He suggests that if the joists supporting the floors require repairing this would be his liability. B, on the other hand, contends that the floors are main timbers and therefore their repair is the landlord's liability. I shall be glad to have your views on the above with any authorities you may be able to quote in support of your views.

A. The use of the word "main" implies that certain timbers are to be distinguished from those which are merely subsidiary. The landlord's contention appears to be correct, as "main" timbers include only the floor joists and rafters of the roof. B is therefore liable to repair or replace the actual floorboards, as these are not "main" in the sense of forming part of the framework of the house. There appear to be no authorities actually in point.

Purchase of Consecrated Ground.

Q. 3535. A client of ours contemplates purchasing land which he understands is "consecrated ground" and which it was intended should be used as a cemetery but will not now be so used. Our client requires the land for the purpose of building a block of flats thereon. We should be glad of your opinion as to what steps are necessary to be taken to free the land of consecration and what consents and orders must be obtained to enable the purchaser to carry out his objects. We understand the land belongs to the Ecclesiastical Commissioners but at present the matter has not reached the stage of draft contract for sale being submitted.

A. Ground which has in fact been consecrated can only be desecrated by a special Act of Parliament; and no secular court is competent to authorise its use for secular purposes; but a faculty can be obtained on application to the Consistory Court of the diocese in which the land is situated. In this particular case, seeing that the land in question belongs to the Ecclesiastical Commissioners, we would suggest that when a draft contract of sale is submitted, the question should be raised, and we have no doubt that their legal department will assist in obtaining the necessary authority without which, of course, the sale and purchase could not be effected.

Enlargement of Long Term—Rent of 11s.

Q. 3536. In 1731, a lease for 800 years, at a rent of 11s. per annum, was granted in respect of certain land. Since 1855 no rent has been paid. From time to time the property has been assigned from one person to another "to hold for the residue of the term of 800 years . . ."; no reference to any rent being made, and the respective purchasers not entering into any covenant to pay the rent, but in each case covenanting to indemnify their respective vendors against any claim for rent or any claim in respect of a breach of any other covenants in the lease. The last assignment was in 1918, and was in the terms above mentioned. Can the present owner sell the fee

simple ? Do the conditions of the lease still hold good in respect of the property ? Statements on p. 804 of the latest edition of Cheshire's "Modern Law of Real Property," would seem to suggest that there may be some difficulty about selling the fee simple.

A. We do not think Dr. Cheshire's book deals fully with the subject of enlargement of a long term into a fee simple. The effect of s. 153 (4) of L.P.A., 1925, is that, as from 1st January, 1930, a rent, not exceeding £1, which has been unpaid for over twenty years can be treated as no longer payable. Provided the other conditions of the section are satisfied (e.g., no proviso of re-entry for condition broken), the term may be enlarged into a fee simple. The recital that no rent has been paid for the period mentioned in the question will, in time, become *primâ facie* evidence of the fact, but in favour of an immediate purchase, the fact had better be evidenced by statutory declaration.

Disablement from Silicosis.

Q. 3537. X, a collier, has been certified as totally disabled from silicosis, and is receiving compensation at the rate of £1 1s. 4d. per week. He is anxious to open a small shop in his house, e.g., sweets and fruit, etc., or to sell greengrocery from door to door. Will this in any way affect his weekly compensation—assume that the profit per week from the shop or trade is (i) 15s. per week, (ii) £3 per week ?

A. If there is no change in the collier's physical condition, the employers can only succeed in obtaining a reduction in weekly payments by showing that the earning capacity is partly restored. The onus is on the employers to show that there is a change in circumstances, whereby the incapacity is now only partial. The mere fact that the collier makes a profit (the amount is immaterial) will not entitle the employer to a reduction. The fact that he is able to make a profit on his own account as a shopkeeper is not necessarily evidence that he is able to earn wages in employment. The question is, therefore, answered in the negative.

Obituary.

Mr. W. E. TYLDESLEY JONES, K.C.

Mr. William Everard Tyldesley Jones, K.C., Bencher of Lincoln's Inn, of New Court, W.C., died in a nursing home in London, on Saturday, 1st January, at the age of sixty-three. Mr. Tyldesley Jones, who was educated at Clifton, began his legal career as a solicitor. He was, however, called to the Bar by Lincoln's Inn in 1905, and he took silk in 1920. He practised mainly at the Parliamentary Bar, where he acquired a very large practice. He was made a Bencher of Lincoln's Inn in 1926, and he was Honorary Standing Counsel to the University of Wales.

Mr. J. W. CALVERT.

Mr. John William Calvert, solicitor of Bradford, died at Leeds recently at the age of thirty-one. Mr. Calvert, who was admitted a solicitor in 1930, was secretary of the Leeds Philharmonic Society.

Mr. H. WHITFIELD.

Mr. Henry Whitfield, solicitor, senior partner in the firm of Messrs. H. & S. R. Whitfield, of Batley, died at his home at Dewsbury on Thursday, 30th December, 1937, at the age of sixty-seven. Mr. Whitfield served his articles with Colonel J. Walter Stead, of Leeds, and was admitted a solicitor in 1902. He was for a time with Mr. G. L. W. Andrews, at Doncaster, and later he went to Batley, where he took over the practice of the late Mr. I. W. Clay. In 1929, he took his son, Mr. S. R. Whitfield, into partnership.

To-day and Yesterday.

Legal Calendar.

3 January.—Local justice a century ago had vagaries even more inexplicable than some which are dispensed to-day. Here, for instance, is a very unusual entry in the Surrey calendar: "Sarah Smither committed the 3rd January, 1807, by the Rev. W. Roberts, charged on her own confession with repeated acts of incontinency for six months." It appears that the frail fair one was for this offence, even then unknown to the law, sent to hard labour in the Guildford House of Correction.

4 January.—The Admiralty Sessions produced a good crop of criminal mariners for dispatch to Execution Dock on the 4th January, 1790. Two of them had stolen a boat, several sails and a wooden compass near Land's End. Two more were found guilty of mutiny on board a Liverpool ship off the African coast. A fifth had stolen a quantity of merchandise, including three casks of Geneva, from a Dutch hoy at Dungeness Roads. For this assortment of offences they all found themselves doomed to hang together.

5 January.—Here is the story of how Lord Chancellor Cairns was called to the Bar. Having taken a first class in classics at Trinity College, Dublin, he joined Lincoln's Inn. The Benchers accepted his fees, allowed him to keep his terms and then when he applied for call refused him on the ground that he had only a Dublin degree. With characteristic independence he refused to take an *ad eundem* degree at Oxford or Cambridge and turned for help to the Middle Temple, which had a strong Irish tradition. The Benchers there heard him kindly and admitted him on the 5th January, 1844, calling him to the Bar a few weeks later.

6 January.—On the 6th January, 1686, James Reynolds, afterwards Chief Baron of the Exchequer, was born at Clerkenwell.

7 January.—From lock-up to altar was the peculiar fate of a young shoemaker who was married in peculiar circumstances at St. James's, Clerkenwell, on the 7th January, 1785, to a blind spinster of forty with a fortune of £1,000. Having heard him tapping away at his work every day from early morning till late at night, she had pressed on him the gift of a watch and a suit of clothes, besides a loan of £10. Shortly afterwards he formed the intention of settling in the country, assuring her that he would exert his utmost endeavours to discharge the unsolicited favours she had heaped on him. She commended his resolution, but next day sued out a writ in respect of the debt and had him locked up. She then visited him with the alternative of immediate payment, prison or marriage. At the church the officer who had executed the writ acted as father to the bride.

8 January.—On the 8th January, 1793, John Morton, a printer's apprentice, and James Anderson and Malcolm Craig were tried in the High Court of Justiciary at Edinburgh for sedition, it being alleged that they had in a room in the Castle drunk the toast: "George the third and last and damnation to all crowned heads," causing various soldiers of the garrison to drink it with them. They were found guilty and sentenced to nine months' close confinement in the Tolbooth, Lord Henderland adding: "By close confinement I mean that there shall be no meeting of associates, no gossiping or drunkenness permitted."

9 January.—On a voyage from Virginia to Antigua, Captain Ferguson, master of the "Betsey," ill-treated his cabin boy so severely for coming on deck with one stocking off that he killed him. Having been convicted of murder at Newgate, he suffered death at Execution Dock on the 9th January, 1771, being afterwards hanged in chains on the marshes. The Marshall of the Admiralty and the

officer carrying the silver oar attended. The prisoner, who was only twenty-six, was so much affected that he had to be supported by two men till he was turned off the ladder.

THE WEEK'S PERSONALITY.

Sir James Reynolds was among the youngest of our judges, for he was only thirty-nine when George I made him a Justice of the King's Bench, evidently bearing him no ill-will for his strenuous argument in support of the Prince of Wales's unsuccessful attempt to secure a judicial pronouncement that he should have the education of his own children and not the King. Five years later, after his old client had ascended the throne, he was promoted to the place of Chief Baron of the Exchequer, but only eight years did he enjoy the dignity, for failing eyesight compelled him to resign at the early age of fifty-two. Seven months afterwards he died. If the daily prayer which it was his custom to use was heard, he must have been a good judge. It was a petition to be granted "that measure of understanding and discernment, that spirit of justice and that portion of courage, as may both enable and dispose me to judge and determine those weighty matters which may this day fall unto my consideration, without error or perplexity, without fear or affection, without prejudice or passion, without vanity or ostentation, but in a manner agreeable to the obligation of the oath and the dignity of that station to which Thou in Thy good providence hast been pleased to call me."

A TERM OF THEFTS.

The legal year which began with the theft of the wigs of three Lords Justices and a good selection of their books has provided a few more incidents *ejusdem generis*. On Christmas Eve thieves took advantage of a party at the home of Sir Felix Cassel, K.C., to make themselves a present of some thousands of pounds worth of jewellery. During the Lewes Assizes an enterprising thief made bold to enter the judges' lodging just opposite the gaol and take possession of the key of the flat of Mr. Justice Charles besides some gold cuff-links and studs. From further afield comes the news of a judge in Budapest who, after severely admonishing a prisoner for the meanness of stealing children's coats from schools found that his own overcoat and those of the jury had been taken during the hearing. No legal robbery I know of has had the splendid audacity of the occasion when a workman with a ladder interrupted a sitting of the Civil Tribunal in Paris to remove the court clock which he said wanted cleaning. Neither clock nor workman was ever seen again.

STOP THIEF!

The subject of lawyers' experiences at the hands of thieves recalls a curious adventure recorded in a newspaper of 1700, a future Lord Chancellor being the central figure: "Two days ago Mr. Simon Harcourt, a lawyer of the Temple, coming to town in his coach, was robbed by two highwaymen on Hounslow Heath of £50, his watch and whatever they could find valuable about him; which being perceived by a countryman on horseback, he dogged them at a distance and they taking notice thereof turned and rid up towards him, upon which he counterfeiting the drunkard, rid forward making antic gestures and being come up with them spoke as if he clipped the King's English with having drunk too much, and asked them to drink a pot, offering to treat them, if they would but drink with him; whereupon they believing him to be really drunk left him and went forward again and he still followed them till he came to Kew Ferry and when they were in the boat discovered them so that they were both seized and committed by which means the gentleman got again all they had taken from him."

The death was announced recently, in Vienna, at the age of 100, of Dr. Adolph Stein, who claimed to be the world's oldest practising lawyer.

Notes of Cases.

Court of Appeal.

The "Sound Fisher."

Greer, Slesser and Scott, L.JJ.
24th, 25th and 26th November, 1937.

SHIPPING—DOCKS—LIABILITY OF OWNERS—SHIP LYING AT BERTH—DAMAGE PROVED—ONUS OF PROVING NEGLIGENCE.

Appeal from a decision of Langton, J.

The owners of a steamship of 500 tons claimed against the owners of a wharf where the vessel berthed in May, 1936. They alleged that in the ordinary course vessels lying there took the ground at the fall of the tide and that the defendants failed in their duty to take reasonable care to maintain the berth in a safe and proper condition. The defendants denied that the berth was unsafe. Langton, J., held that the plaintiffs had not shown that the damage was sustained at the berth and dismissed the action.

GREER, L.J., allowing the plaintiffs' appeal, said that the real dispute between the parties was whether the damage was due to an earlier grounding in February, 1936, or to some unknown cause operating in the berth where the vessel had been put on the defendants' instructions. His lordship considered the evidence and said that there was nothing to indicate that the vessel had received the slightest damage till she went to the berth. No other conclusion was, therefore, possible except that something in the berth caused the damage, which the plaintiffs had proved had been done. If a bailor proved that he got back his goods badly damaged, it was then for the person in charge of the place where the article bailed was to establish that it happened without negligence on his part. The fact that in this case the plaintiffs' men were on board the ship was *nihil ad rem*, because the berth was under the control and in the possession of the defendants and not the plaintiffs. The observations of Atkin, L.J., in the *Ruapehu*, 21 Ll. L. Rep., at pp. 315–6, applied to the position of the owner of a berth whose duty it was to see that the berth was fit for the vessel he invited to use it. The obligations were the same as if the relations were those of bailor and bailee. The reason the onus was put on the bailee was because the bailor could not be expected to know whether or not reasonable care had been taken. This view was adopted in the *Moorcock*, 14 P.D. 64. It was no use arguing that certain experts said that the damage could not have happened in the berth when the court accepted evidence that it had not happened before the vessel came to the berth. Had the defendants shown by calling witnesses that they had exercised due care in examining sufficiently, on sufficient occasions, this particular berth in order to see that it was still in order? His lordship then observed that a certain witness had not been called, and said that they had failed to discharge the onus on them and could not succeed.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Noad*, K.C., and *H. Holman*; *Carpmael*, K.C., and *V. Hunt*.

SOLICITORS: *Holman, Fenwick & Willan*; *Ince, Roscoe, Wilson & Glover*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Allied Newspapers Ltd. *v.* Hinsley (Inspector of Taxes).

Greene, M.R., Romer and MacKinnon, L.JJ.
8th and 9th December, 1937.

REVENUE—INCOME TAX—BUILDING RENTED FOR PURPOSES OF TRADE—PART SUB-LET—WHETHER RENT PAID DEDUCTIBLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), SCHED. D., CASES I AND II, r. 3 (*a*).

Appeal from a decision of Lawrence, J. (81 SOL. J. 569).

Between 1927 and 1931 the respondent company acquired a site in Manchester and erected a building on it. They formed

a subsidiary company to which they sold the building for £204,000, the cost price. They then took a lease of the building from the subsidiary company, which they entirely controlled, at a rack rent of £14,000, plus certain ground rents. The respondents used part of the building so leased to them for the purposes of their business of newspaper proprietors, and sub-let or endeavoured to sub-let the greater part which they did not occupy. Their object in acquiring the site erecting the building and taking the lease, was to ensure unimpeded transport in Mark Lane for the rapid distribution of their newspapers, and clauses were inserted in the sub-leases precluding the tenants from interfering therewith. The Commissioners accepted evidence that control of the building was essential to their trade to maintain this unimpeded traffic and found that this was effectively attained when the site was bought and the building erected. They held, however, that the operation of renting the building and sub-letting portions thereof was distinct from the respondents' trade and that they were not entitled to deduct as an expense wholly and exclusively incurred for the purposes of their trade within the meaning of Cases I and II, r. 3 (*a*), of Sched. D to the Income Tax Act, 1918, the difference between the rent which they paid for the building and the rents they received from their sub-tenants. Lawrence, J., reversed this decision.

GREENE, M.R., dismissing the Crown's appeal, said that the taking of the lease put the respondents in precisely the same position with regard to control as if they had not sold the freehold. The essential thing was that they should be in a position to control the tenants. If the matter had stood there the consequence in law would clearly have been that the rent paid for the lease which gave the respondents control of the premises would have been "money wholly and exclusively laid out or expended for the purposes of the trade." If they had kept the site vacant there would have been no tenants there likely to obstruct the passage of Mark Lane and they would have had as much control over the traffic as under existing conditions. They would then have been in occupation of the site for the purpose of their business only though they had no printing-press or workmen there. Further, if there had been buildings on the site and to obtain control of them they had bought an existing lease under which rent was payable, it could not have been said that the rent under the lease was not "money wholly and exclusively laid out or expended for the purposes of the trade," and that they were not entitled to deduct that rent. In fact, the building they erected was nothing more than the ordinary reasonable use of a valuable piece of land in the heart of Manchester which they could not be expected to keep sterilised and unprofitable. The Commissioners, having started with the proposition that the whole transaction down to the erection of the buildings, the sale and the lease was necessary to give the respondents control, seemed to think it was permissible to regard the subsequent sub-letting as something apart from the business of newspaper proprietors. They were not entitled to take that view. If the rent under the lease was a permissible deduction, how was the right to make the deduction affected by the fact that the respondents by sub-letting had diminished their total annual expenditure in connection with it? If a business requiring an exceptional amount of light were carried on next door to a one-storey building which, if raised, would obstruct the light and which was held under a lease at £100 a year, then if the proprietors of the business acquired the lease to protect themselves, the £100 a year would be a proper deduction. If they sub-let part of it at £50 a year they would be entitled to deduct £50. The fact that the site in the present case was vacant was irrelevant. The erection of the building was ordinary and reasonable. The Commissioners had found that the whole transaction down to the granting of the lease had to be regarded in its entirety as resulting in giving the respondents effective control of Mark Lane.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. Hills*; *Needham*, K.C., and *Scrimgeour*.

SOLICITORS: *Solicitor of Inland Revenue*; *Slaughter & May*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Corbett *v.* Inland Revenue Commissioners.

Greene, M.R., Romer and MacKinnon, L.JJ.
13th December, 1937.

REVENUE—SUR-TAX—RESIDUARY LIFE TENANT—SUMS RECEIVED DURING PERIOD OF ADMINISTRATION OF ESTATE—WHETHER LIABLE FOR SUR-TAX.

Appeal from a decision of Lawrence, J. (81 SOL. J. 734).

A testator died on the 22nd April, 1934, his estate amounting to about £2,750,000. He devised his residuary estate to trustees on trust to divide it into certain shares. The income of a share they were to pay to his daughter, the wife of the present respondent, for life, without power of anticipation, and after her death they were to hold her share in trust for her children. The residuary account of the estate was made up as at the 7th May, 1935, the earliest date practicable. Among the accounts, besides the residuary account kept by the executors during their period of the administration of the estate, was a balance sheet and income account as at the 5th April, 1935, wherein appeared £13,600 placed to the daughter's credit, the gross equivalent of that sum with the appropriate addition of income tax being £17,073; £6,000 was actually paid to her before the end of the administration. Her husband having been assessed to sur-tax in an amount which included this £17,073, Lawrence, J., held that it should have been excluded.

GREENE, M.R., dismissing the Crown's appeal, said that the Crown had contended below that the whole £13,600 should be grossed up to £17,073 for sur-tax purposes, but before the Court of Appeal the contention had been limited to the £6,000. That payment was nothing but a payment on account of the amount to which the daughter would ultimately be found to be entitled when the final adjustment was taken. The Crown had contended that every payment, whether pending the administration or at its conclusion, was of necessity an income payment and formed part of her income, so as to be part of her husband's income for sur-tax purposes. But *Dr. Barnardo's Homes* v. *Special Commissioners of Income Tax* [1921] 2 A.C. 1, could not be read in the limited sense contended for by the Crown. The general principle underlying it was that till the amount of the residue was ascertained the beneficiaries had no right to the income. There was great importance in the distinction drawn there between executors and trustees. When trustees received income which it was their duty to pay to beneficiaries, it was the income of the beneficiaries, but income received by executors pending administration of the estate was not the income of the beneficiaries in that sense. The rule in *Allhusen* v. *Whittell*, L.R. 4 Eq. 295, could not alter the fundamental fact that during the period of administration income received by the executors was their income and that of no one else. During that period the tenant for life was not entitled to the income as such. *Marie Celeste Samaritan Society of the London Hospital* v. *Inland Revenue Commissioners*, 43 T.L.R. 23, was rightly decided and concluded this question.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.), *J. H. Stamp* and *R. Hills*; *Latter*, K.C., *R. Hodge* and *F. Talbot*.

SOLICITORS: *Solicitor of Inland Revenue*; *Tamplin, Joseph, Ponsonby, Ryde & Flux*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

The Bailiff of Jersey, Mr. A. Coutanche, has appointed Advocate H. V. BENEST to the office of Sergent de Justice, Royal Court, Jersey, in succession to Mr. J. A. Balleine.

Appeals from County Courts.

Goadby *v.* Orridge.

Greene, M.R., Romer and MacKinnon, L.JJ.

26th November, 1937.

COSTS—HIGH COURT ACTION—REMITTED TO COUNTY COURT—WHOLE COSTS ORDERED TO BE TAXED ON COUNTY COURT SCALE—DISCRETION OF COUNTY COURT JUDGE—COUNTY COURTS ACT, 1934 (24 & 25 Geo. 5, c. 53), ss. 47, 73.

Appeal from Birmingham County Court.

In an action founded on tort, begun in the High Court and remitted to the county court under the County Courts Act, 1934, s. 46, judgment for £60 and costs was given for the plaintiff on the 20th April, 1937. The recorded minute of the judgment contained no special direction as to costs, and the Registrar taxed the costs on the High Court Scale down to the date of remission and thereafter on Scale C of the County Court Scale. On the defendant's application, His Honour Judge Ruegg amended the minute by making all the costs taxable under Scale C.

GREENE, M.R., delivering the judgment of the court dismissing the plaintiff's appeal, said that they accepted the contention that on the 20th April the judge had directed the whole of the costs to be taxed on Scale C. When the order remitting the action had been made there had been no special order as to the costs down to the date of remission, and so the costs of the whole proceedings were in the discretion of the county court judge. The question was whether he had power to give costs down to the date of remission on any but the High Court Scale. The language of the first part of s. 73 of the 1934 Act suggested that he had discretion to direct all the costs to be taxed on the County Court Scale, but by para. (i) of the proviso to the section, the costs of the proceedings before remission were made subject to s. 47. The section dealt with the costs in the High Court of an action which could have been begun in the county court, but was in fact begun and concluded in the county court. It compelled the court in such an action, where the amount recovered fell within certain specified limits, either to deprive the plaintiff of all costs or to allow him county court costs only. The upward limit in tort actions was £50. The plaintiff had contended that by implication in all other cases the High Court would be bound to allow costs on the High Court Scale and that had these proceedings not been remitted he would have been entitled to costs on that scale. He had further argued that the only cases in which a county court judge could direct the costs before remission to be taxed on the County Court Scales were those in which the High Court would have been bound to order them to be so taxed under s. 47 in the case of a non-remitted action. Even if it were conceded that the High Court judge had no power to deprive a successful plaintiff of High Court costs in a case not falling within s. 47, merely because the action could have been begun in the county court, he was entitled to award only county court costs in any case where, in his opinion, having regard to all the circumstances, the action should have been begun in the county court. The county court judge had a like discretionary power with regard to the costs of a remitted action before remission. There was a conflict of recollections in this case between the respective counsel as to the reasons given by the judge for his decision as to costs, one contending that he had decided solely on the ground that the action could have been begun in the county court and the other contending that he had held that it should have been begun there. In the circumstances, the appellant had not discharged the burden of satisfying the court that the judge had acted on a wrong principle. Further, as the case did not fall within s. 47 (4), *Jenkins & Co.* v. *Simon* [1926] 1 K.B. 111, was not in point.

COUNSEL: *Colin Coley*; *P. B. Morle.*

SOLICITORS: *A. Wood & Co.*, for *D. Wood & Co.*, of Birmingham: *Ward, Bowie & Co.*, for *Duggan & Elton*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Mussen *v.* Van Dieman's Land Co.

Farwell, J. 23rd November, 1937.

VENDOR AND PURCHASER—SALE OF LAND—CONTRACT—INSTALMENT PAYMENTS—PROVISION FOR RESCISSION AND FORFEITURE OF MONEYS PAID IN EVENT OF DEFAULT—DEFAULT BY PURCHASER—CLAIM TO RECOVER MONEY PAID.

In November, 1927, the plaintiff, an experienced business man, entered into a contract with the defendant company for the purchase by him of certain lands in Tasmania for £321,000, £4,000 of which was paid on account. Payment of the balance was to be in certain specified instalments over a period of five years, the first payment falling due six months after the resolution of the company's shareholders approving the contract, and the next two years later. It was agreed by cl. 6 that when these payments had been made part of the land sold known as the Surrey Hills block and the South Birnie site (the value of which was specified in the schedule to the contract as £99,300) should be conveyed to the purchaser, and by cl. 9 that he should be put into possession of the residue of the land. It was further provided by cl. 12 that if the purchaser made default in any of the other instalments the company might "subject to and without affecting in anywise the sale and the conveyance or the right thereto under cl. 6 hereof, by notice in writing . . . rescind this agreement and may either enter into possession of any lands . . . remaining unsold (and thereupon all moneys already paid by the purchaser shall be absolutely forfeited to the land company and the contract shall subject as aforesaid thereupon become absolutely null and void) or may subject as aforesaid re-sell the same . . . and in such case any deficiency in price (after giving credit for all sums paid by the purchaser . . . as part payment of the sum of £321,000), which may result on such re-sale . . . shall be made good by the purchaser and shall be recoverable as liquidated damages by the land company and any surplus arising from such re-sale and realisation shall belong to the purchaser. And for the purpose of this clause time is of the essence of the contract." The first instalment became due on the 2nd May, 1928, and consequently the next payments became due on the 2nd May, 1930. The plaintiff then paid sums bringing his total payments to £139,500 and the land mentioned in cl. 6 was conveyed to him. The difference between his payments and the value of the land conveyed, as set out in the schedule, was £40,200. The company, however, by agreement retained temporary possession of the rest of the land in consideration of consenting to the postponement of part of the payments due. Thereafter, by reason of the Australian financial crisis, the plaintiff was unable to continue the payments agreed, and in May, 1931, the company, refusing to extend the time for payments, gave him notice that they rescinded the contract and elected to enter into possession of the lands of which they were already in temporary possession. Thereafter they remained in possession as owners and also retained the moneys already paid to them. In this action commenced in October, 1936, the plaintiff claimed a declaration that he was entitled to repayment of such part of the purchase price as was not attributable to the Surrey Hills block and the South Birnie site. He also claimed payment of £40,200 as money had and received by the company to his use.

FARWELL, J., in giving judgment said that rescission under cl. 12 did not make the contract null and void *ab initio*. The money was at all times after the date of payment under the

terms of the contract the money of the company and the plaintiff could not maintain a claim for money had and received by them for his use. It had been argued that the provision for forfeiture in certain events of the instalments paid was in the nature of a penalty, and that, accordingly, a court of equity should relieve the plaintiff by ordering the company to repay the whole or part. The basis of the equitable doctrine relied on was that it was against conscience for the money to be retained. It was the doctrine which enabled a court of equity to relieve a mortgagor (see also *Sloman* v. *Walter*, 1 Bro. C.C. 418). Unless the court was satisfied here that there was something unconscionable in what the company sought to do there was no jurisdiction to grant relief. It was no ground for granting relief to a person from the effect of a contract he had himself made to say that he had, through no fault of the defendant, found himself in difficulties or that the bargain might not turn out good from his point of view. When the contract was entered into both sides must have realised and intended the effect to be that if the plaintiff for any reason found himself in the position in which he was in 1931, he would lose the money he had already paid. How could it be said that because that event had happened it was unconscionable for the defendants to retain the money? Apart from cases where it had been held that a plaintiff was entitled to specific performance after there had been some breach by him of its terms, on the ground that he was then ready and willing to carry out its terms, the court had not relieved from a penalty in the case of a sale of land where there was an express stipulation in the contract that the money was to be retained by the vendor in the event of the purchaser failing to complete the contract. *Steedman* v. *Drinkle* [1916] 1 A.C. 275, had no application to this case because the basis of the judgment was that the plaintiff was willing to perform the contract. There was no ground for asking for specific performance here, the action having been brought after so many years had elapsed. The fact that the delay was due to his misfortune mattered not for this purpose. Further, the fact that part of the land had been conveyed to the plaintiff made it impossible to let him off his bargain. He had got part of what he had bargained for and he had not got the rest because he could not complete the contract. The action should be dismissed.

COUNSEL: *Evershed*, K.C., and *W. G. Brown*; *Radcliffe*, K.C., *Andrewes Uthwatt* and *Ian Macdonald*.

SOLICITORS: *Linklaters & Paines*; *Bischoff, Coxe & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Nicholson's Settlement; Molony *v.* Nicholson.

Farwell, J. 3rd December, 1937.

TRUST—SETTLEMENT—LIFE INTEREST—POWER TO APPOINT TO SURVIVING HUSBAND—OFFER TO RELEASE POWER IN RETURN FOR RIGHT TO DISPOSE OF PART OF CAPITAL—OFFER REFUSED—MARRIAGE OF LIFE TENANT AT EIGHTY—POWER EXERCISED—WHETHER VALID.

The sole means of E.N., a spinster, over eighty years of age, consisted of the income she derived under a settlement dated 1882, made by her mother. The settlor, now dead, took a life interest, and subject thereto, the property was divisible among her children, her sons taking absolutely, and her three daughters' shares being settled on them for life without power of anticipation. Thereafter, the shares were to be held in trust for the issue of the daughters, and in the event of there being no such issue, for the other beneficiaries. It was further provided that any of the daughters notwithstanding any coverture or whether covert or sole might by deed or will appoint that after her death all or any part of the income of her share should be paid to any husband who might survive her for his life or for any less period, and upon such conditions and with such restrictions and in such manner as she should think fit. E.N. was the last surviving daughter, her deceased sisters having left no issue. She had lived for some years in the United States with a family who were not relations of hers, and having formed a considerable affection for them was anxious to make some provision for them. In 1933, she began a correspondence with the trustees' solicitors seeking to make a bargain with those of her relations who would become entitled to the capital of her share after her death, whereby she would release her power to appoint the income thereof to her husband, and they would give up half the capital so that she might be free to dispose of it as she wished. This her relations declined, despite her suggestion that she might marry and exercise her power of appointment. The correspondence lasted till May, 1934, and in that month she married one, N.Q., a man about fifty years old, subsequently exercising her power of appointment in his favour. Though they met frequently, they did not live together. She died in 1936. The question arose whether the appointment was invalid as being a fraud on the power.

FARWELL, J., in giving judgment said that it had been argued that the appointment must be taken to have been made for the purpose of enabling her friends to be benefited. But there was evidence from the husband that nothing had been done or said to fetter him in any way in dealing with the property. Therefore, there was no fraud on the power. Those seeking to impeach the appointment had not distinguished between motive and purpose. The question of a fraud on a power of appointment where there was only one object of it was different from the question of a fraud on a power under which the fund could be given to one or more of several objects. Where there was only one object of the power a fraud could not be established unless there was evidence of some arrangement or bargain, not necessarily a legal bargain, under which the appointee was to give effect to the purpose of the appointor to benefit someone other than himself. It was different when the appointor had power to select among a class. Then it did not matter that the appointee knew nothing of the improper motive and it was not necessary to prove an arrangement. There being no evidence that the appointor was under any legal or moral obligation to use the money in any way except as he chose, the attempt to establish a fraud on the power broke down. The exercise of the power was valid.

COUNSEL: *J. Sparrow*; *Hon. Benjamin Bathurst*; *Radcliffe*, K.C., and *A. G. Cross*; *R. W. Turnbull*; *J. Nesbitt*.

SOLICITORS: *Frere, Cholmeley & Co.*; *Freshfields, Leese & Munns*; *Preston, Lane-Claypon & O'Kelly*, for *Hazel & Baines*, of Oxford; *Blyth, Dutton & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Home Grown Sugar Ltd.

Simonds, J. 7th December, 1937.

COMPANY—ARTICLES OF ASSOCIATION—MINISTER OF AGRICULTURE APPLYING FOR SHARES—SPECIAL INCIDENTS—NO DIVIDEND PAYABLE DURING FIRST TEN YEARS—WINDING UP—DISTRIBUTION OF SURPLUS ASSETS—SUM "EQUIVALENT TO THE AMOUNT OF DIVIDEND ON A SHARE"—WHETHER SUBJECT TO DEDUCTION OF TAX.

The company was incorporated in 1920, with a nominal capital of £1,000,000 in £1 shares, its object being the cultivation of sugar beet. The articles of association provided for the allotment of shares to the Minister of Agriculture and Fisheries which, so long as he held them, were to be subject to certain restrictions. It was provided by art. 4 that they were not "except as provided as regards deferred dividend in the event of transfer at the call of the directors under the next following article hereof, to be entitled to rank for or receive any dividend or interest during the establishment period" (i.e., ten years from the company's incorporation).

Thereafter, those shares were to be entitled to dividend at 5 per cent. By art. 5 the directors were entitled to call on the Minister to sell those shares to any persons nominated by them, provided that in such event the company should pay him, in addition to their par value, out of its reserve fund or other moneys in its hands available for distribution as dividend, "a sum equivalent to dividend or interest (less income tax) at the rate of 5 per cent. per annum calculated from the date of the allotment of the share or shares to the date of transfer." After the establishment period the Minister's shares were to be on the same footing as other shares (art. 9). Article 10 dealt with a winding up while any shares were held by the Minister or any profit notes issued by the company were outstanding, and provided that surplus assets after repayment of the amount paid on issued shares should be applied in payment to the Minister (*a*) in respect of each share held by him "of a sum equivalent to the amount of dividend received on a share of the company issued originally to the public on the first general allotment of shares, less the amount of dividend received on such share held by the Minister," and (*b*) of unpaid interest on any profit notes outstanding. In 1920, the company entered into an agreement with the Minister, who undertook to apply for a number of ordinary shares equal to the number allotted to the general public, to pay sufficient moneys to the company to guarantee a 5 per cent. dividend on the public's shares during the development period, and to deduct and account to the Inland Revenue Commissioners for income tax on any moneys so agreed to be paid, the company issuing profit notes to the Minister for such moneys. Two hundred and fifty thousand shares were allotted to the Minister, and a like number to the public. In 1923, there was a reduction of capital. In 1936, as a result of the Sugar Industry (Reorganisation) Act, 1936, it was resolved to wind up the company voluntarily. After repayment of the issued capital there were surplus assets available for distribution. No profit notes were outstanding. The question arose whether under art. 10 the sum "equivalent to the amount of dividend received on a share of the company issued originally to the public" to be paid to the Minister in the winding up in respect of each share held by him was the net amount actually received by the other shareholders, or was that amount plus the income tax deducted from the gross dividends in respect of which payment of the same was made.

SIMONDS, J., in giving judgment, said that the matter was one of construction, and he got little help from *In re Dominion Tar and Chemical Co. Ltd.* [1929] 2 Ch. 387. The question was whether "the amount of dividend received" meant the sums actually received by the shareholders or the sums they would have received by way of dividend if the same dividend had been declared and no tax deducted. The obvious purpose of the provision was to equate the shares of the Minister with those of the other shareholders, and to make up to him what he had lost by the payment to others and the withholding from him of dividends during the establishment period, but to adopt the contention of his counsel would be to put him in a more favourable position than the other shareholders, since no income tax would be payable in respect of sums received by him in the winding up (*Inland Revenue Commissioners* v. *Burrell* [1924] 2 K.B. 52). "The amount of dividend received by the shareholder" was the amount actually received after the company had exercised its right to deduct the appropriate amount of tax. It was true that for other statutory purposes the whole of the dividend was to be regarded as the shareholder's income, though he only received part of it, but it did not follow that the shareholder was to be regarded, for the purposes of such an article as this, as receiving what he did not in fact receive. This was not a case of a shareholder entitled to the whole dividend directing the company to pay the appropriate part of it as income tax on his behalf. The company itself decided whether or not it would deduct tax from dividend. It had been suggested that since in proper cases a shareholder was entitled to recover from the Crown the tax deducted from his dividend, the whole dividend and not the dividend less tax should be regarded as "the amount of dividend received," but the court could not accept that view for the words indicated a common standard. They meant the amount of dividend paid to the shareholder, and did not include the amount withheld.

COUNSEL: *Rawlence; Danckwerts; Morton*, K.C., and *Terence Donovan*.

SOLICITORS: *Charles Rogers, Sons & Abbott; Treasury Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Draper *v.* British Optical Association.

Farwell, J. 9th December, 1937.

INJUNCTION—MEMBER OF ASSOCIATION—SUMMONS TO APPEAR BEFORE COUNCIL—ALLEGED BREACH OF PROFESSIONAL CONDUCT—ACTION TO RESTRAIN COUNCIL FROM ENFORCING CODE OF ETHICS—PREMATURE BEFORE MEETING HELD.

The plaintiff, a member of the defendant association, was employed by a firm of opticians, and managed one of their branches. They sold spectacles and all sorts of optical goods, and provided a person capable of sight testing, charging a fee of 5s. Under their instructions, the plaintiff sent out to persons in the neighbourhood of his branch an advertisement of spectacles and sight-testing apparatus, including prices. It was drawn up at and issued from the firm's head office. On the 24th June, 1937, the secretary of the association wrote to the plaintiff requiring an assurance that the advertisement would be withdrawn and drawing his attention to the relevant clauses of a code of ethics under which advertising of prices and sight testing was out of order, and which he said had been adopted by the association. Previously, in the *Dioptric News*, a paper controlled by the association, there had been published a statement that infractions of the code would be dealt with as breaches of professional conduct. After certain correspondence in which the plaintiff disclaimed responsibility for the advertisement issued by his firm, he received on the 6th September, twenty-one days' notice of a meeting of the council of the association to consider whether his name should not be removed from the register of members in that he had been alleged to have been guilty of conduct which might render him unfit to be allowed to remain a member in consequence of a form of advertisement exhibiting prices. It was stated that the notice was given under arts. 17 and 19 of the articles of association, and he was asked whether he wished to appear before the council and be heard. Article 19 was as follows: "If any member fails to observe art. 17 or art. 18, or if not less than three other members represent to the council in writing that a member has been guilty of conduct which may render him unfit to be allowed to remain a member, or if it appears to the council that he has been guilty of such conduct, the council shall consider the allegations made against the member, and if the council is satisfied that the member has committed a breach of either of the said articles, or that he has been guilty of conduct as aforesaid, the council may decide to exclude him from membership." In this action the plaintiff sought a declaration that the association were not entitled to attempt to enforce the code of ethics on him, and that such enforcement was *ultra vires*, and an injunction to restrain them from attempting to remove him from the register on the ground set out in the correspondence that he had advertised prices and disobeyed the code of ethics. The association undertook not to hold the meeting till a reasonable time after the hearing.

FARWELL, J., in giving judgment, said that the plaintiff was not suing on behalf of himself and other members for a declaration that the attempt to enforce the code was *ultra*

vires. He sought a declaration that an attempt to enforce it on him personally was *ultra vires*. To succeed he must satisfy the court that the defendants had done or were threatening to do what he said was *ultra vires*. If the meeting had been held and it had been purported to expel him because he had been guilty of an infraction of the code of ethics, he would have had a cause of action which the court could try and determine. But the statement in the *Dioptric News* and the letter of the 24th June were not sufficient evidence that the defendants were threatening or intending to enforce the code on him. Before a court would entertain a *quia timet* action, there must be satisfactory evidence that the defendant was threatening to do what it was said he was not entitled to do. The plaintiff here had failed to establish that. As to the claim that the defendants were not entitled to remove the plaintiff from the register, that was a misunderstanding of the correspondence. The council were entitled to hold the meeting under art. 19, to consider whether the plaintiff had been guilty of conduct rendering him unfit to be a member and to consider whether some particular form of advertising was such conduct. The court could not say the meeting should not be held. When it had been held then if the plaintiff were expelled for some reason which was not sufficient, the court could interfere, and, if necessary, restrain the association from purporting to expel him. To ask the court to restrain the council from holding a meeting when no one knew what was going to happen there was a misconception. The action at this stage was misconceived and should be dismissed.

COUNSEL: *Morton*, K.C., and *E. Pearce*; *Croom-Johnson*, K.C., and *John Henderson*.

SOLICITORS: *Reed & Reed*; *Wedlake, Letts & Bird*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Books Received.

The Scottish Law Directory for 1938. Forty-seventh year. Glasgow, Edinburgh and London: William Hodge & Co. Ltd. 10s. net.

The Annual Charities Register and Digest. Forty-fifth Edition. 1938. Demy 8vo. pp. (with Index) 535. London: Longmans, Green & Co. Ltd.; Charity Organisation Society. 8s. 6d. net.

Private International Law. By G. C. CHESHIRE, D.C.L., M.A., of Lincoln's Inn, Barrister-at-Law. Second Edition. 1938. Demy 8vo. pp. lxxii and (with Index) 692. London and Oxford: Humphrey Milford, Oxford University Press. 25s. net.

Rules and Orders.

REGULATIONS, DATED DECEMBER 20, 1937, MADE BY THE BOARD OF EDUCATION, UNDER SECTION 28 OF THE SOLICITORS ACT, 1932 (22 & 23 GEO. 5. C. 37), AS AMENDED BY SECTION 6 OF THE SOLICITORS ACT, 1936 (26 GEO. 5 & 1 EDW. 8. C. 35), WITH THE CONCURRENCE OF THE LORD CHANCELLOR, THE LORD CHIEF JUSTICE AND THE MASTER OF THE ROLLS, WITH REFERENCE TO EXAMINATIONS EXEMPTING PERSONS PROPOSING TO BECOME SOLICITORS FROM THE PRELIMINARY EXAMINATION UNDER THE SOLICITORS ACT, 1932.

1. The examinations mentioned in the Schedule hereto if passed in accordance with the conditions and subject to the standards hereinafter prescribed shall be examinations the passing of which exempts persons proposing to become Solicitors from passing a Preliminary Examination under the Solicitors Act, 1932.

2. In order that exemption may be obtained by passing one of the examinations mentioned in Part I of the Schedule hereto the person claiming exemption *must have obtained a pass with credit in Latin in that Examination and must also have obtained a pass with credit (either at the time when he passed the examination as a whole or on some other occasion) in three other subjects selected from the following groups of subjects, namely:—*

(i) English Subjects,
(ii) Languages (other than English),
(iii) Science and Mathematics.

3. In order that exemption may be obtained by passing one of the examinations mentioned in Part II of the Schedule hereto the person claiming exemption *must have satisfied the Examiners in Latin in that examination.*

4. The Regulations dated the 27th July, 1932,* shall continue in force until the 1st day of January, 1938, on which day the said Regulations shall be superseded and replaced by these Regulations, but not so as to affect any exemption obtained by having passed an examination before that date by virtue of the Regulations of 1932.

Schedule.

PART I.

The School Certificate Examination of the Oxford and Cambridge Schools Examination Board.
The School Certificate Examination of the Oxford Delegacy of Local Examinations.
The School Certificate Examination of the Cambridge Local Examinations Syndicate.
The School Certificate Examination of the University of Bristol.
The School Certificate Examination of the University of Durham.
The General School Examination of the University of London.
The School Certificate Examination of the Northern Universities Joint Matriculation Board.
The School Certificate Examination of the Central Welsh Board.

PART II.

The Higher Certificate Examination of the Oxford and Cambridge Schools Examination Board.
The Higher School Certificate Examination of the Oxford Delegacy of Local Examinations.
The Higher School Certificate Examination of the Cambridge Local Examinations Syndicate.
The Higher School Certificate Examination of the University of Bristol.
The Higher Certificate Examination of the University of Durham.
The Higher School Examination of the University of London.
The Higher School Certificate Examination of the Northern Universities Joint Matriculation Board.
The Higher Certificate Examination of the Central Welsh Board.

I concur. *Hailsham*, C.
I concur. *Hewart*, C.J.
I concur. *Wilfrid Greene*, M.R.

Given under the Official Seal of the Board of Education this 20th day of December, 1937.

M. G. Holmes,
(L.S.) Secretary to the Board of Education.

* S.R. & O. 1932 (No. 697) p. 1610.

Legal Notes and News.

New Year Legal Honours.

BARONS.

Sir (FRANCIS) JOHN CHILDS GANZONI, Baronet, D.L., M.P. for Ipswich, 1914 to 1923 and since 1924. Called to the Bar by the Inner Temple in 1906. For political and public services.

Sir HENRY YARDE BULLER LOPES, Baronet, J.P., D.L., Chairman of Devon County Council, Deputy President of the University College of the South West, Exeter. Called to the Bar by the Inner Temple in 1888. For public services.

BARONET.

RICHARD ALFRED PINSENT, Esq., LL.D., Senior Member of the Council and Chairman of the Statutory Discipline Committee of The Law Society. Admitted a solicitor in 1873.

KNIGHTS BACHELOR.

JAMES EDWARD CECIL BIGWOOD, Esq., J.P., D.L., Chairman of the Joint Standing Committee of London Quarter Sessions, Chairman of the Finsbury Bench of Magistrates.

CECIL PATRICK BLACKWELL, Esq., M.B.E., Puisne Judge of the High Court of Judicature of Bombay. Called to the Bar by the Inner Temple in 1907.

JOHN COLDSTREAM, Esq., Indian Civil Service, lately Puisne Judge of the High Court of Judicature at Lahore, Punjab.

BERNARD ARTHUR CREAN, Esq., Colonial Legal Service, Chief Justice, British Guiana.

ARTHUR EGGAR, Esq., Barrister-at-Law, Advocate-General, Burma. Called to the Bar by the Inner Temple in 1906.

Alderman ERNEST HADFIELD, O.B.E., J.P. Admitted a solicitor in 1899. For political and public services in Southport, Lancashire.

ALFRED HENRY LIONEL LEACH, Esq., Chief Justice of the High Court of Judicature at Fort St. George, Madras. Called to the Bar by Gray's Inn in 1907.

HENRY TINDAL METHOLD, Esq., J.P., Master in Lunacy, Supreme Court of Judicature. Called to the Bar by Lincoln's Inn in 1894.

HENRY D'ARCY CORNELIUS REILLY, Esq., Indian Civil Service (Retired), Chief Justice in Mysore State.

BISHESHWAR NATH SRIVASTAVA, Esq., O.B.E., Chief Judge, Chief Court of Oudh, United Provinces.

HARRY HERBERT TRUSTED, Esq., Colonial Legal Service, Chief Justice, Palestine. Called to the Bar by the Inner Temple in 1913.

ORDER OF THE BATH.

K.C.B.

SIR THOMAS JAMES BARNES, C.B.E., H.M. Procurator-General and Treasury Solicitor.

MAURICE GERALD HOLMES, Esq., C.B., O.B.E., Permanent Secretary, Board of Education. Called to the Bar by the Inner Temple in 1909.

LUCIUS ABEL JOHN GRANVILLE RAM, Esq., C.B., First Parliamentary Counsel to the Treasury. Called to the Bar by the Inner Temple in 1910.

C.B.

ALBERT ROBINSON, Esq., Controller of Death Duties, Board of Inland Revenue.

ALBERT HENRY SELF, Esq., Second Deputy Secretary, Air Ministry. Called to the Bar by Lincoln's Inn in 1922.

ORDER OF ST. MICHAEL AND ST. GEORGE.

C.M.G.

Major The Hon. ROBERT JAMES HUDSON, M.C., Judge of the High Court, Southern Rhodesia. Called to the Bar by the Middle Temple in 1909.

ROYAL VICTORIAN ORDER.

K.C.V.O.

ALFRED EDWIN DUNPHIE, Esq., C.V.O. Called to the Bar by Gray's Inn in 1895.

C.V.O.

Sir EDWARD FRANCIS KNAPP-FISHER. Admitted a solicitor in 1887.

ORDER OF THE BRITISH EMPIRE.

G.B.E.

Sir ANDREW RAE DUNCAN, LL.D. For public services. Chairman of the Central Electricity Board, 1927-35. Called to the Bar by Gray's Inn in 1920.

C.B.E.

CECIL CHARLES HUDSON MORIARTY, Esq., O.B.E., LL.D., Chief Constable of Birmingham.

WALTER SUTHERLAND WILKINSON, Esq., Chief Inspector of Audit, Ministry of Health. Called to the Bar by the Middle Temple in 1899.

O.B.E.

OSCAR HENRY BROWN, Esq., Presidency Magistrate, 2nd Court, Mazagaon, Bombay. Called to the Bar by Gray's Inn in 1923.

EDWARD PERCY EVEREST, Esq., M.B.E., Superintendent Registrar of the Shrewsbury Registration District, Clerk of the Atcham Rural District Council.

GERALD SEBASTIAN WHITE, Esq., Registrar, High Court of Judicature at Fort St. George, Madras.

M.B.E.

AMIN AHMED, Esq., Judge of the Presidency Small Cause Court, Calcutta, Bengal.

STEWART CHAPPLE, Esq., Clerk of Rules and Orders, Principal Probate Registry, Supreme Court of Judicature.

PETER ANTHONY D'ABREW, Esq., Deputy Registrar, Appellate Side, High Court of Judicature at Fort William in Bengal.

JOSEPH DICKINSON, Esq., Clerk of the Westhoughton Urban District Council.

MEHMET RAIF HUSSEIN, Esq., District Judge, Cyprus.

Honours and Appointments.

Lord Roche has resigned his office of Lord of Appeal in Ordinary and the King has been pleased to approve that Sir MARK LEMON ROMER, a Lord Justice of Appeal, should be appointed a Lord of Appeal in Ordinary; that Sir ALBERT CHARLES CLAUSON, a Justice of the Chancery Division of the High Court of Justice, should be appointed a Lord Justice of Appeal; and that Mr. FERGUS DUNLOP MORTON, K.C., should be appointed a Justice of the High Court of Justice, Chancery Division. Mr. Morton was called to the Bar by the Inner Temple in 1912, and by Lincoln's Inn in 1914. He took silk in 1929.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. WALTER BLAKE ODGERS be appointed Recorder of Southampton, to succeed Mr. Justice Tucker. Mr. Odgers was called to the Bar by the Middle Temple in 1906.

The King has, on the recommendation of the Secretary of State for Scotland, to whom the name was submitted by the Lord Justice General, approved of the rank and dignity of King's Counsel to His Majesty in Scotland being conferred on Mr. MATTHEW GEORGE FISHER, advocate. Mr. Fisher was admitted to the Faculty of Advocates in 1913.

The Lord Chancellor has appointed Mr. ALFRED VIOTT[1] RHODES to be the Registrar of Kingston-upon-Hull and Beverley County Courts as from the 1st day of January, 1938. Mr. Rhodes was admitted a solicitor in 1920.

Mr. W. T. CRESWELL, K.C., Vice-President of the Royal Sanitary Institution, has been re-elected Chairman of its Parliamentary Committee. He has also been elected an honorary member of the Institute of Arbitrators.

Mr. JAMES CHARLES GARDNER, Senior Legal Assistant to the Dagenham Urban District Council, has been appointed Town Clerk of Dartmouth. Mr. Gardner was called to the Bar by Gray's Inn in 1933.

Professional Announcements.

(2s. per line.)

JANSON COBB PEARSON & CO., of 22, College Hill, Cannon Street, E.C.4, have taken into partnership, as from 1st January, 1938, MICHAEL FELLOWS PEARSON, B.A. Oxon, who has been associated with them for some years, and who is the son of a member of the firm.

Messrs. PARIS, SMITH & RANDALL have as from 1st January, 1938, taken into partnership Mr. C. G. A. PARIS and Mr. L. GORDON, both of whom have been associated with the firm for some time. The name of the firm will remain unchanged.

Messrs. PEARCE, KEELE & HARFIELD, solicitors, announce that as from the 1st January, 1938, they are taking into partnership Mr. MICHAEL F. J. EMANUEL, who has been associated with their firm for some years. The new partnership will be carried on at Nos. 6 and 8, St. Michael's Street, Southampton, under the style of Messrs. PEARCE, HARFIELD AND EMANUEL.

Notes.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 20th day of January, 1938, at 10 o'clock in the forenoon.

Mr. Ernest E. Bird has been re-elected Chairman of the Board of Directors of the Legal & General Assurance Society Limited for the ensuing year and The Hon. W. B. L. Barrington re-elected Vice-Chairman.

Mr. W. J. Irving Scott (Cleghorn and Harris, Ltd.) has been elected President of the Chartered Institute of Secretaries in succession to Sir Stephen Killik. Sir George Broadbridge and Major Richard Rigg have been elected Vice-Presidents. Mr. Leslie C. Gamage (General Electric Company, Ltd.) has been re-elected treasurer.

Mr. William Bishop, solicitor to the Southern Railway, who retired at the end of 1937, had been a railway solicitor for fifty-three years. After some years with the L.N.W.R. he joined the L.S.W.R., and he was appointed solicitor in 1910. On the amalgamation of the Southern group of railways in 1923, he became the chief solicitor of the Southern Railway.

Saying "the time will come when pedestrians will have to carry lights," Mr. W. F. McCoy, the Belfast Resident Magistrate, imposed a fine of 6d. on William Mansfield, of Belfast,

for "jay walking," says *The Times*. Mansfield was knocked down by a motor car. The defending solicitor said: "My client has been walking for thirty-one years without previous accident."

Public lectures, arranged by the University of London, will be given at King's College, Strand, on the following dates: Wednesday, 26th January, at 5.30 p.m., "The Law of Public Meetings," by Mr. E. C. S. Wade, LL.D., Fellow and Tutor of Gonville and Caius College, Cambridge; Wednesday, 23rd February, at 5.30 p.m., "Aspects of the Statute Book," by Mr. Cecil T. Carr, LL.D.

The Annual General Meeting of the Bar will be held in the Inner Temple Hall on Tuesday, the 18th January, 1938, at 4.15 o'clock: The Attorney-General will preside. Any member of the Bar shall be at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the Council not less than seven clear days before the day of meeting, and that in the opinion of the Executive Committee of the Council such resolution is a matter of general interest to the Bar.

Wills and Bequests.

Mr. Charles Harvey Plant, solicitor, of Preston, left £16,591, with net personalty £10,905.

Mr. William Edward Martyn, solicitor, of Temple, E.C., left £13,010, with net personalty £11,886.

Mr. Thomas Berry, solicitor, of Chorley, Lancs, left £18,077, with net personalty £17,917.

SIMPLIFICATION OF THE HIGHWAY LAWS.

APPOINTMENT OF COMMITTEE.

The Minister of Transport and the Minister of Health have appointed a committee of eighteen members, with the following terms of reference: "To examine the existing law relating to highways, streets, and bridges in England and Wales and to prepare one or more Bills codifying the law with such amendments as may be desirable to secure simplicity, uniformity, and conciseness." The chairman of the committee is Lord Amulree and the other members are: Mr. Leslie C. Bowker, Remembrancer, City Corporation; Mr. L. S. Brass, Assistant Legal Adviser, Home Office; Mr. Frank Clarke, M.P. for Dartford; Mr. Ernest Evans, M.P., University of Wales; Mr. T. D. Harrison, Solicitor and Legal Adviser, Ministry of Health; Mr. H. A. Hield, Town Clerk of Torquay; Mr. G. R. Hill, Parliamentary Counsel to the Treasury, 1929–37; Mr. F. E. W. Howell, Town Clerk of Manchester; Mr. Ernest C. King, Clerk and Solicitor to Coulsdon and Purley Urban District Council; Sir F. Liddell, Counsel to the Speaker and Chairman of the Statute Law Committee; Mr. Cecil C. Oakes, Clerk of East Suffolk County Council; Mr. J. A. Parkinson, M.P. for Wigan; Mr. J. R. Howard Roberts, Solicitor and Parliamentary Officer, L.C.C.; Sir Joshua Scholefield, K.C., Recorder of Middlesbrough; Mr. E. V. Thompson, an Assistant Solicitor in the Treasury Solicitor's office and attached to the Ministry of Transport; Mr. R. H. Tolerton, principal Assistant Secretary in charge of the Highways Division of the Ministry of Transport; Mr. F. Webster, Town Clerk of Kensington; Sir Seymour Williams, Chairman of the Rural District Councils' Association.

LEGAL & GENERAL ASSURANCE SOCIETY LIMITED.

During 1937, the Society transacted a larger amount of new Life business than in any previous year of its history, and, in addition, for the first time the total net Sums Assured, inclusive of Sinking Fund business, exceeded £20,000,000. The Life New Business figures for 1937 show that during the year, 21,030 policies were issued compared with 21,926 in 1936. The total net Life Sums Assured amounted to £18,517,197, as compared with £16,897,582 in 1936, an increase of £1,619,615. The net new business in the Life Assurance Fund is divided into two categories as follows:—Ordinary Business, £7,237,730; Decreasing Term and Group, £11,279,467. One thousand one hundred and six Immediate Annuities were issued in connection with which the Consideration money received amounted to £1,404,762, as compared with 1,165 Immediate Annuity Bonds for £1,577,317 Consideration money in 1936. Deferred Annuities including Group Annuities amounted to £2,213,639 per annum as against £1,709,754 per annum for 1936. Three hundred and fifty-three Sinking Fund policies were issued for an amount of £1,518,300, as against 299 policies for an amount of £1,355,256 in the previous year.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 20th January 1938.

	Div. Months.	Middle Price 5 Jan. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	109½	3 13 1	3 6 4
Consols 2½%	JAJO	75	3 6 8	—
War Loan 3½% 1952 or after ...	JD	102	3 8 8	3 6 8
Funding 4% Loan 1960-90	MN	113	3 10 10	3 3 4
Funding 3% Loan 1959-69	AO	98	3 1 3	3 2 0
Funding 2½% Loan 1952-57	JD	95¼	2 17 9	3 1 7
Funding 2½% Loan 1956-61	AO	90½	2 15 5	3 2 0
Victory 4% Loan Av. life 22 years ...	MS	111½	3 11 9	3 5 2
Conversion 5% Loan 1944-64 ...	MN	114½	4 7 4	2 7 6
Conversion 4½% Loan 1940-44 ...	JJ	106⅝	4 4 7	2 5 8
Conversion 3½% Loan 1961 or after	AO	102¾	3 8 2	3 6 7
Conversion 3% Loan 1948-53 ...	MS	102	2 18 10	2 15 5
Conversion 2½% Loan 1944-49 ...	AO	98	2 11 0	2 14 3
Local Loans 3% Stock 1912 or after	JAJO	88	3 8 2	—
Bank Stock	AO	342½	3 10 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	78½	3 10 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86½	3 9 4	—
India 4½% 1950-55	MN	112	4 0 4	3 5 6
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½xd	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	107½	3 14 5	3 5 8
Tanganyika 4% Guaranteed 1951-71	FA	107½xd	3 14 5	3 5 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	2 17 9
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90xd	2 15 7	3 4 10
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	90	3 6 8	3 13 9
*Canada 4% 1953-58	MS	109	3 13 5	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50 ...	JJ	98	3 11 5	3 14 2
New Zealand 3% 1945	AO	98	3 1 3	3 6 1
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	103	3 8 0	3 4 10
Victoria 3½% 1929-49	AO	99	3 10 8	3 12 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	101	3 9 4	3 8 4
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85¼	3 10 2	—
Manchester 3% 1941 or after ...	FA	85xd	3 10 7	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	96½	2 11 10	2 17 0
Metropolitan Water Board 3% "A" 1963-2003	AO	88¼	3 7 10	3 8 11
Do. do. 3% "B" 1934-2003 ...	MS	90	3 6 8	3 7 7
Do. do. 3% "E" 1953-73 ...	JJ	95	3 3 2	3 4 9
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 11
* Do. do. 4½% 1950-70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable ...	MN	85	3 10 7	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109	3 13 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	127½	3 18 5	—
Gt. Western Rly. 5% Rent Charge ...	FA	126½	3 19 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference ...	MA	117½	4 5 1	—
Southern Rly. 4% Debenture ...	JJ	106½	3 15 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	105½	3 15 10	3 13 0
Southern Rly. 5% Guaranteed ...	MA	126	3 19 4	—
Southern Rly. 5% Preference ...	MA	114½	4 7 4	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.